CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 ~~9~~

No. 590 ~~9~~ 17

KARL HERBRING, APPELLANT,

vs.

CLAIRE A. LEE, AS INSURANCE COMMISSIONER OF THE STATE OF OREGON

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

FILED DECEMBER 17, 1928

(33,899)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 19, 1929

[fols. 1-5]

IN CIRCUIT COURT OF MARION COUNTY

#19185

CARL HERBRING

vs.

CLARE A. LEE, as Insurance Commissioner of the State of Oregon

JUDGMENT—Jan. 23, 1928

This matter coming on regularly to be heard on this 27th day of December, 1927, plaintiff appearing by Kelly and MacMahon, Mr. MacMahon present, his attorneys, and defendant appearing by I. H. Van Winkle, Attorney General, and Willis S. Moore, Assistant Attorney General, Mr. Moore present; the court having read the stipulation of facts submitted by the parties and heard the argument of counsel for and on behalf of plaintiff and defendant, respectively, and it appearing to the court that on or about the 13th day of October, 1927, the Northwestern National Fire Insurance Company made application to the defendant, as Insurance Commissioner of the State of Oregon, for the appointment of Carl Herbring, a resident of the city of Portland, Oregon, to act as an additional insurance agent for said company in said city of Portland, and it further appearing to the court that said application was refused by the defendant for the reason that the said Northwestern National Fire Insurance Company refused to pay an additional annual license fee of $500 required by said section 6388. Oregon Laws, to be paid by any insurance company appointing an additional agent as provided by subdivision 8, of said section 6388, Oregon Laws; and, it further ap-
[fol. 6] pearing and the court finds that said provision requiring the payment of an annual license fee of $500 is void and unconstitutional and an unlawful interference with the right of said agent to engage in the business of selling fire insurance in the State of Oregon and with the right of

said insurance company to appoint such agent, except upon the payment of said additional license fee of $500.

It is hereby ordered that the said defendant be and he is hereby required to issue to said plaintiff a license to act as agent for the Northwestern National Fire Insurance Company in the sale of fire insurance in the city of Portland, Oregon, without said Northwestern National Fire Insurance Company being required to pay to the State of Oregon the sum of $500 as an annual license fee for the appointment of such agent, and that plaintiff do have and recover of and from the defendant his costs and disbursements herein taxed at $—.

The defendant having duly given notice in open court that he appeals from the above order to the Supreme Court of the State of Oregon,

It is further ordered that said notice of appeal be entered in the journal of this court.

[fol. 7] IN CIRCUIT COURT OF MARION COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed Feb. 24, 1928

To Karl Herbring, plaintiff above named, and to Kelly and MacMahon, his attorneys:

Please take notice that the above named defendant appeals to the Supreme Court of the State of Oregon from the order made and entered in the above entitled cause by the above named court on the 24th day of February, 1928, in favor of the plaintiff and against the defendant, and from the whole thereof.

I. H. Van Winkle, Attorney General; Willis S. Moore, Assistant Attorney General, Attorneys for Defendant and Appellant.

[fol. 8] STATE OF OREGON,
County of Marion, ss:

I, Willis S. Moore, being first duly sworn, depose and say that on the 24th day of February, 1928, I served the

within Notice of Appeal upon Kelly and MacMahon who are the Attorneys for Plaintiff, by then depositing in the United States postoffice at Salem, Oregon, a full, true and correct copy thereof addressed to the said Kelly and MacMahon, at 420 Puget Sound Bank Bldg., Tacoma, Washington, and prepaying the postage thereon.

Willis S. Moore, of Attorneys for Defendant and Appellant.

Subscribed and sworn to before me this 24th day of February, 1928. J. B. Hosford, Notary Public of Oregon. My commission expires 6/9/28. (Seal.)

[File endorsement omitted.]

[fol. 9] Clerk's certificate to foregoing papers omitted in printing.

[fol. 10] In Circuit Court of Marion County

[Title omitted]

Stipulation as to Facts—Filed Dec. 13, 1927

It is hereby stipulated by and between the parties hereto that the following facts may be considered by the Court as admitted upon the trial of the above entitled action, to-wit:

1. That plaintiff is a duly and regularly licensed practicing attorney with offices in the Porter Building, Portland, Oregon; that for the past fifteen years or more, the plaintiff has followed such vocation and is now in good standing as such attorney and entitled to practice such profession in the courts of the State of Oregon.

2. That the defendant is the duly and regularly appointed, qualified and acting Insurance Commissioner of the State of Oregon.

3. That on or about the 13th day of October, 1927, the plaintiff duly filled out upon the form prescribed and furnished by the defendant as Insurance Commissioner, his agent's report and application for a license to issue to him to represent the Northwestern National Insurance Com-

pany in the city of Portland, State of Oregon, which application was in words and figures following:

[fol. 11] "Department of Insurance, State of Oregon

Fire, Fire (Automobile), Marine, of Fire and Marine Insurance

Agent's Qualification Report to the Insurance Department, State of Oregon

I hereby make application for an agent's license to transact — insurance business in the State of Oregon in compliance with requirements of the law regulating such business.

I warrant the answers to inquiries in this statement to be full, true and complete, and I understand the law makes them have the same force and effect as if such statement were made under oath.

Date: Oct. 13, 1927.

1. Name of applicant: Karl Herbring. (If firm, name members of firm; if corporation, name officers.)

2. Business address: (Street and number:) 1202 Porter Bldg., Portland, Ore.; Residence: 801 Mason St. (Town or City:) Portland, Ore.

3. Occupation last twelve months: Attorney.

4. Insurance companies of any kind represented last twelve months? (Fire, Marine, Life, Miscellaneous:) None.

5. Where represented? ——.

6. Has your license ever been refused, suspended or revoked by the insurance department of this or any other state? If so, give particulars. No.

7. Are you now or have you been the plaintiff or defendant in any suit involving an insurance company? If so, give particulars. No.

8. (a) Company you now desire license to represent: Northwestern National Insurance Company of Milwaukee, Wisconsin; (b) What business will you transact for this company? (Fire, Automobile, Marin-:) Fire Insurance.

9. Do you hold this agency for the purpose of insuring property of yourself, your firm or corporation, or of your

employer? No. If so, how much other insurance do you expect to write? ——.

10. Give names connected with your agency, including salaried employes, authorized to solicit insurance. None.

11. Are you sufficiently conversant with the insurance laws of Oregon to properly protect both parties to an insurance contract? Yes.

12. I hereby agree not to discriminate or mispresent in any matters of insurance; neither will I, directly or indirectly, rebate nor split commissions with any agent not licensed in this state.

(Signature of person or firm desiring license:) Karl Herbring.

[fol. 12] This application is approved and we request that license be granted.

(Company:) Northwestern Nat'l Ins. Co., by (Desig-title of person signing for company:) L. S. Frudenfeld, Special Agent, Porter Bldg., Portland Oregon."

Date: Oct. 13, 1927.

4. That the Northwestern National Insurance Company of Milwaukee, Wisconsin, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and has for many years last past and is now duly qualified to write policies of fire insurance in the State of Oregon and covering property in said state.

5. That on or about the 18th day of October, 1927, the defendant returned the said application of plaintiff to the Northwestern National Insurance Company of San Francisco, California, and enclosed therewith a letter of which the following is a copy:

"October 18, 1927.

Mr. D. W. Clark, Manager, Northwestern National Insurance Co., 310 Sansome Street, San Francisco, California.

Dear Mr. Clark: We are in receipt of a letter from Mr. Karl Herbring, Portland, in which he enclosed his check for $2.00 and agent's qualification report filled out by himself.

As this department can not accept applications direct from an applicant, we are attaching, hereto, application blank which we ask that you please complete and return to this department at your early convenience, and oblige.

Yours very truly, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy.

CMcN/R.

Encls. 1."

[fol. 13] 6. That the application blank referred to in said letter of October 18, 1927, is in the following form, to-wit:

"Fire, Marine, Fire and Marine, Fire (Automobile), Marine (Inland)

Fire and Fire and Marine—Application

To the Insurance Commissioner of the State of Oregon, Salem, Oregon:

The —— —— certifies that it has, in compliance with the provisions of the Laws of Oregon, established agencies at the places named in the following schedule and duly appointed the persons, firms and corporations named in said schedule, who reside and do business at such places, agents for the transaction thereat of the business of — insurance so far as they may be legally empowered by their letters of appointment, powers of attorney and the instructions which may be given them by it. Request is therefor- made that a license be issued to each such agent authorizing them to act for such company during the year ending April first following the date of this appointment.

Signed at —— this — day of ——, A. D. 192-.

—— ——, Secretary, Manager, General or Special Agent.

Certificates $2.00 each, whether for individual, firm or corporation.

This appointment must be signed either by officers of the Company, or by the manager or agent having authority on record with the Commissioner.

The name of each and every individual member comprising a firm, and the names of the principal officers (president and secretary) of a corporation, must be given.

Certificate number	Name of agent (individual, firm or corporation)	Individual names of members of firm and principal officers of corporation	County	Place of residence
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

7. That under date of October 20, 1927, the Northwestern National Insurance Company addressed to the defendant a letter of which the following is a copy:

"October 20, 1927.

Hon. Clare A. Lee, Insurance Commissioner, Salem, Oregon.

DEAR SIR: In compliance with your letter of October 18th we return herewith, properly signed, the application of Karl [fol. 14] Herbring to represent us as agent in Portland.

Thanking you most kindly for the issuance of the license, we are

Yours very truly, D. W. Clark, Manager Pacific Coast Department."

DWC/T.
Enc.

8. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the Northwestern National Insurance Company a letter of which the following is a copy:

"October 22, 1927.

Mr. D. W. Clark, Northwestern National Insurance Co., 310 Sansome Street, San Francisco, California.

DEAR MR. CLARK: We are returning, attached, your application for Mr. Karl Herbring, Portland, Oregon, together with his qualification report. Check No. 4806 sent us in payment of the fee is being returned to Mr. Herbring as it was received from his office:

As your Portland quota is filled by the agencies of John B. Coffey & Company, and the Pallett, Strum, Reed Company, your request for license cannot be granted unless you wish to pay the additional fee of $500.00, as the Oregon Law provides:

"Any such insurance company which is authorized to transact fire insurance in this state in its corporate title

and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.'

In this connection please refer to Section 22c (6338), paragraphs 4, 6, 7, and 8, pages 40-42, Oregon Insurance Laws, 1925.

Very truly yours, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy."

CMcN/R.
Encls.

[fols. 15 & 16] 9. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the plaintiff a letter of which the following is a copy:

"October 22, 1927.

Mr. Karl Herbring, Attorney at Law, 1202 Porter Building, Portland, Oregon.

DEAR MR. HERBRING: We are attaching, hereto, check No. 4802 for $2.00 written in favor of the Insurance Commissioner of Oregon in payment of fee for license in your favor to represent the Northwestern National Insurance Company. We have today returned your application and qualification report to the San Francisco Office, inasmuch as you would make a third agency for the Northwestern National Insurance Company in Portland, and this is not permissible under the Oregon Insurance Laws, unless the additional fee of $500.00 is paid for such license.

Yours very truly, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy."

CMcN/r.
Encls. 1.

And it is further stipulated that this stipulation shall take the place of and shall be considered by the court upon the hearing hereof as the return of the defendant Commissioner made in conformity with the statute respecting the same.

Dated at Salem, Oregon, this 12th day of December, 1927.

Karl Herbring, In Pro. Per. Kelly — MacMahon, of Attorneys for Plaintiff. I. H. Van Winkle, Attorney-General for Oregon, Attorney for Defendant. Willis S. Moore, Assistant.

[File endorsement omitted.]

[fols. 17 & 18] Bond on appeal for $500, approved and filed October 31, 1927, omitted in printing.

[fol. 19] In Circuit Court of Marion County

[Title omitted]

Notice of Appeal—Filed Oct. 31, 1927

To Clare A. Lee, Insurance Commissioner of the State of Oregon:

You are hereby notified that I, Karl Herbring, plaintiff above named, do hereby appeal to the Circuit Court of the State of Oregon for Marion County from that certain order made and entered by you on October 22, 1927, wherein and whereby you refused and declined to issue a commission and license to the undersigned to act as an agent and write fire insurance policies for the Northwestern National Insurance Company of the City of Portland, Oregon, for the reason that said company already had two such agents in said City of Portland and an additional fee of $500.00 was not paid or tendered with the application the undersigned made for such license; and I hereby appeal from the whole of said order.

Dated October 31, 1927.

Karl Herbring, In Pro. Per. Kelly & MacMahon, Herbring & Smith, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 20] IN SUPREME COURT OF OREGON, DEPARTMENT No. 2

KARL HERBRING, Respondent,

v.

CLARE A. LEE, as Insurance Commissioner of the State of Oregon, Appellant

OPINION—Filed July 17, 1928

BEAN, J.:

Reversed.

[File endorsement omitted.]

[fol. 21] The defendant appeals from the judgment of the circuit court requiring him to issue to plaintiff, Carl Herbring, a license to act as agent for the Northwest National Fire Insurance Company in the sale of fire insurance in the city of Portland, Oregon, without said fire insurance company being required to pay to the state of Oregon the sum of $500 as an annual license fee for the appointment of an additional agent.

BEAN, J.:

Section 6333 Or. L. provides that, except in certain instances therein specified, which are not material to the question herein presented, as follows:

"No company, association, person or persons, authorized to transact insurance or offer indemnity contracts in this state, other than life insurance companies, and not incorporated under the laws of this state, hereinafter designated as company, shall make, write, place or cause to be made, written, or placed, any policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state of Oregon, liability created by or accruing under the laws of such state, or undertakings to be performed in such state, except through their regularly commissioned and licensed resident agents, who shall countersign all policies or indemnity contracts so issued and collect the premiums therefor, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state, and no person shall pay or forward any premiums or applications

for insurance or in any manner secure, help or aid in the placing of any insurance, or effect any contract of insurance or indemnity upon property, liability or undertakings located in this state with any such insurer which is not authorized to transact its business in this state; provided:

* * * * * * *

(3) "Every company duly authorized and licensed to transact insurance business, other than life insurance companies, in the state of Oregon, and lawfully doing such business therein, may in respect thereof appoint an agent or agents in each city, town or village in this state, and the name of every agent appointed in accordance with the provisions of this section, including the classes of business he is authorized to transact for such company, shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner, if he finds the agent qualified, shall thereupon issue to each such agent a license setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending April 1st, following the date of such appointment; provided, that the license issued to an established agency of any company in any city, town or village in this state may be transferred by the insurance commissioner to another agent or agency upon proper application of any such company, without exacting further fees. Every such license for each such agent representing any such company shall be renewed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such license shall be $2 and shall be paid to the insurance commissioner."

[fol. 22] Plaintiff, a resident and practicing attorney in the city of Portland, Oregon, made application to the defendant as insurance commissioner for a license to act as agent in that city for the Northwest National Fire Insurance Company, a foreign insurance corporation, which for several years had been qualified and doing insurance business in the state of Oregon. The application of the plaintiff was denied by the insurance commissioner for the reason that the Northwest National Fire Insurance Company

is a foreign fire insurance corporation, and that it had already appointed two resident agents to act for it in the city of Portland under its corporate name, and that a third agent for said city to act under its corporate name could not be appointed except upon the payment of an additional fee of $500 by said insurance company. The refusal was based upon Section 6388 Or. L., which relates to the conditions upon which such companies may write insurance in the state of Oregon.

That section provides that it shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place, or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent, or agents, of such insurance company residing and doing business in this state.

Subdivision 2 of said section requires every fire insurance company before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, to file with the insurance commissioner of this state the title under which it proposes to write any such insurance in the state of Oregon, and that such title shall be registered by the insurance commissioner, together with the name of the insurance company filing such title, and a specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner, and that upon paying the fee as thereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

Subdivision 3 requires every insurance company registering a title under said act to pay to the insurance commissioner a fee of $5 therefore and that the insurance com- [fol. 23] missioner shall then issue a certificate to the insurance company registering such title.

Subdivision 4 provides that every insurance company licensed to transact fire insurance business in this state may establish agencies to consist of but one agent for every city, town or village in the state to represent the title registered and additional agencies as thereinafter provided in said section, and that the name of every agent appointed

in accordance with the provisions of said section shall be filed with the insurance commissioner immediately upon the making of such appointment. It is further provided that the insurance commissioner shall thereupon issue to each such agent who is qualified, a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March 31, after the date of such appointment; that a fee of $2.00 shall be paid to the insurance commissioner for issuing such certificate.

Subdivision 5 provides that any insurance company authorized to transact fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of a corporate title and may issue its policies under such additional title and appoint agencies to transact its business under such additional title.

Subdivision 6 provides that any such insurance company which is authorized to transact fire insurance in this state in its corporate title, and also under an additional title, may only appoint one agent to represent each such title filed in any city, town or village of this state.

Subdivision 7 provides that such company may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants, according to the last federal census, provided any such insurance company doing business under an additional title shall be limited to one agency for each title.

Subdivision 8 provides thus:

"Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of [fol. 24] an annual license fee of five hundred dollars for each such agent."

The Northwest National Fire Insurance Company notified the appellant that it had appointed the respondent to act as its agent in the city of Portland, Oregon, but did not pay the annual license fee of $500 required by the subdivision to be paid upon application of such agent.

It is the contention of the respondent in this case that his application for a license as insurance agent was made pursuant to section 6333 Or. L. and that since no objection was raised as to his personal qualifications, it became the duty of the insurance commissioner to issue such license to him upon the payment of a fee of $2.00 therefor which was tendered by the respondent with his application.

The commissioner's refusal to make the requested appointment was occasioned by the nonpayment of the fee of $500 required by Section 6388 Or. L. as a condition precedent to the right of any fire insurance company to appoint such additional agent. The contention of respondent is, that the license should issue upon compliance with the conditions prescribed by section 6333 Or. L. without the foreign insurance company complying with section 6388 Or. L. subdivision 8, by paying the fee of $500 thereby required.

Chapter 203, General Laws of Oregon 1917, which is practically a fire insurance code, is a general act "for the regulation and supervision of insurance in the state of Oregon." This act contains subdivision 8, section 6388 Or. L. and also subdivision 3, section 6333 Or. L.

There is no reason suggested or conceived why a foreign insurance company applying to do business in this state should not comply with both of the sections and subdivisions mentioned. Therefore, a foreign corporation being required to comply with the statute, in order to be entitled to appoint agents and consummate its business in the state of Oregon, it follows, as the night follows the day, that in order for an agent to obtain a license to represent such a foreign corporation there must first be a compliance by the foreign corporation with the requirements of our state law.

The power of the state to impose conditions upon which [fol. 25] a foreign fire insurance company may be permitted to do business in this state is not subject to constitutional limitations, and the rights of one applying for a license to act as agent for such insurance company are contingent upon the compliance of the company with conditions precedent to its right to appoint such an agent. Section 6388 Or. L., Sec. 22c Ch. 203, Gen. L. of Or. 1917; Paul v. Virginia, 8 Wall. 168, 19 L. ed. 357; Fire Ass'n. of Phila. v. N. Y. 119 US 110, 30 L. ed. 342; Hooper v. State of Cal. 155

U. S. 648, 39 L. ed. 297; Cheney Bros. Co. v. Mass. 246 U. S. 147, 62 L. ed. 632; Am. Smelting etc. Co. v. Colorado, 204 U. S. 103, 9 Ann. Cas. 978, and cases in note thereto.

While the general power of a state to exclude, restrict or regulate foreign corporations seeking to do business within its borders, is undoubted, the exercise of such power by particular statutes is subject to all applicatory constitutional provisions contained in either the state or the federal constitution. With the question of the expediency or policy of the statutes imposing conditions upon foreign corporations, the courts have nothing to do. It is purely a legislative question. The statute must stand, unless it is plainly in conflict with some constitutional provision; and, if there is doubt as to its constitutionality, the doubt must be resolved in favor of the legislature. 14A C. J. p. 1428 Sec. 3949.

There is no prohibition in the federal constitution which operates to restrain the legislature of a state from exacting from foreign corporations as a condition precedent to their being admitted to do business within the state, license fees or taxes, even where they are not imposed upon similar domestic corporations. 14A C. J. p. 1256 section 3958. There is no discrimination in the statute as compared with domestic corporations.

Having given a foreign corporation a license to do business within the state, the state may revoke it in its discretion for good cause or without any cause at all and its motive in doing so is not open to inquiry, subject of course to the constitutional requirements with respect to the obligation of contracts, vested rights, and due process of law. With like limitations, additional requirements, conditions, and restrictions may be imposed on foreign corporations already licensed to do business within the state. 14A C. J. p. 1247, Sec. 3948.

[fol. 26] In a note to State ex rel. Ackerman, 51 Ohio St. 163, 24 L. R. A. 298, reads thus:

"That insurance is not commerce within the constitutional provisions giving congress authority to regulate commerce and preventing state interference therewith has been fully established by the decisions of the United States Supreme Court, the final authority on the subject, as well as by decisions of the state courts. Paul v. Virginia, 75 U. S.

8 Wall. 168, 19 L. Ed. 357; Ducat v. Chicago, 77 U. S. 8 Wall. 410, 19 L. Ed. 972; Liverpool & L. Life & Fire Ins. Co. v. Oliver, 77 U. S. 10 Wall. 566, 19 L. Ed. 1029; Home Ins. Co. of N. Y. v. Augusta, 93 U. S. 116, 23 L. ed. 825; People v. Thurber, 13 Ill. 554; Farmers & M. Ins. Co. v. Harrah, 47 Ind. 236; List v. Comm. 118 Pa. 322; State v. Phipps, 18 L. R. A. 657, 50 Kan. 609.

Therefore to insurance companies the general doctrine fully applies, that a state may exclude a foreign corporation, or impose upon it, as a condition of doing business, any burdens or restrictions that it chooses, reasonable or unreasonable."

A corporation seeking, by its agents, to establish a domicile for business in a state other than that of its creation, must take that domicile, as individuals are always understood to do, subject to the responsibilities and burdens imposed by the laws which it finds in force there. S. S. White Dental Manuf. Co. v. Commonwealth, 212 Mass. 35, 98 N. E. 1056, Ann. Cas. 1913C, 805, 808. Making the right to act as agent for foreign insurance company subject to the condition of the payment of a fee, or a restriction, tending to limit the number of agents to act for a foreign insurance company in this state, is not an unconstitutional impairment of the privileges and immunities of a citizen, since corporations are not within the protection of the provisions relating thereto, and persons seeking to act for them can acquire no greater rights than the corporations have. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the state which may be directly or incident-ly requisite in order to render the enforcement of the conceded power efficacious to the fullest extent subject always, of course, to the paramount authority of the constitution of the United States. Cook v. Howland, 74 Vt. 393, 59 L. R. A. 338.

The insurance business so directly affects the well-being and interest of the public as to make it a proper subject for regulation and control by the state. The right to regulate [fol 27] and control the business includes the right to regulate and control the agents and brokers through whom such business is carried on. The state has the right to require all persons who engage within its borders in the business of insurance, first to secure a license from designated author-

ity, authorizing the engaging in such business. Wallace v. Ferguson, 70 Or. 306, 312, 140 P. 742, 141 P. 542; La Tourette v. McMaster, 248 U. S. 465; Noble v. English, 183 Iowa 893, 167 N. W. 629. Note to N. W. Nat. Ins. Co. v. Fishback, 130 Wn. 490, 228 P. 516, 36 A. L. R. at pages 1507, 1512, and other cases there cited.

In La Tourette v. McMaster, 248 U. S. 465, a statute was held to be constitutional which provided that only such persons shall be licensed to act as insurance agents or brokers as are residents of the state and have been licensed agents of the state for at least two years. The court said that the business of insurance was clothed with a public interest, and subject therefore to the regulating power of the state, "and it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker, so engaged—is an instrument of such consummation. The statute makes him the representative of the insured. He is also the representative of the insurer * * * and his fidelity to both may be the concern of the state to secure."

It must be conceded that a state has the power to prohibit a foreign corporation from doing business in the state of Oregon. This includes the lesser power to regulate and impose a restriction upon such foreign corporation as a condition precedent to its doing business or to enlarge or extend its business in this state.

The attack is made by respondent upon the validity of subdivision 8, section 6388 Or. L. as in violation of section 20, Article I of the Constitution of Oregon, which provides that no law shall be passed granting to any citizen or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens. It is also claimed that the provision is repugnant to the 14th amend- [fol. 28] ment of the constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws.

The provisions of the statute do not abridge any right, guaranteed by the state or federal constitutions. Fergu-

son v. Tuttle, 95 N. J. L. 374. The latter case is in principle like the one in hand.

It is also said that the law is discriminatory, oppressive and arbitrary. The qualification prescribed by the statute is neither discriminatory, oppressive or arbitrary between persons. It is a plain, simple prerequisite under which a foreign insurance company can do business in the state of Oregon. The legislature in its wisdom had the power to prescribe the conditions under which agents can do business in the state for foreign insurance companies. All are alike under the law. There is no discrimination.

It may as well be said that the state should permit a foreign corporation to do busines within its borders, without any compliance with the statute in order that citizens of the state might act as agents for such foreign corporations, as it is to say foreign corporations should not comply with subdivision 8, section 6388, in order that a license might be issued to an agent to represent such foreign insurance company. The regulation of the appointment of agents of such corporations is merely incidental to the provisions for the qualifications of foreign insurance companies to do business in this state.

In the case of N. W. Nat. Life Ins. Co. v. Fishback, 130 Wn. 490, 228 P. 516, 36 A. L. R. 1507, the opinion of the majority of the supreme court of Washington was directed solely to the effect of the statute in depriving persons who desire to act as agents from following such occupation. This case was followed in Franklin F. Ins. Co., v. Montoya, (N. M.) 251 P. 390, where it was held that a statute prohibited more than one agent of fire insurance companies in each town violates the due process and special privilege clauses.

There is some reason for the requirement for the re- [fol. 29] striction contained in the statute limiting or tending to limit the number of agents of foreign insurance corporations as a matter of regulation and supervision. While no specific requirements are contained in the law as to such agents keeping a record, it is well known that a record of the issuance of fire insurance policies are kept by such agents. And a less number of agents would doubtless require less effort of supervision and would facilitate the supervision of insurance business to a certain extent, as the commissioner could verify reports made by foreign in-

surance companies for the basis of taxation, by an examination of the books and records of agents.

The main purpose of the provision of the statute appears to be in the nature of a restriction on a foreign insurance corporation. It is purely a legislative question, 14 A. C. J. p. 1248 Sec. 3949.

We hold that the statute involved is a valid legislative requirement of a foreign insurance company in the conduct of its business in the state of Oregon. The judgment of the circuit court is reversed and the proceeding is dismissed.

Rand, C. J., Brown and Belt, JJ., concur.

[fol. 30] IN SUPREME COURT OF OREGON

[Title omitted]

JUDGMENT—July 17, 1928

This cause on June 26, 1928, having been duly tried, argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It is therefore considered, ordered and decreed that the decree of the court below in this cause rendered and entered be and the same is reversed and set aside.

The court having fully considered the allegations of the parties and the entire record herein finds that the plaintiff is without equity in this proceeding and is not entitled to the relief prayed for or any relief.

It is therefore considered, ordered and decreed that the plaintiff take nothing by his complaint and that his suit be and the same is hereby dismissed.

[fol. 31] It is further ordered that appellant recover of and from respondent his costs and disbursements in this court, taxed at $—.

It is further ordered that this cause be remanded to the court below from which the appeal was taken with directions to enter a decree in accordance herewith.

[fol. 32] Certificate to foregoing paper omitted in printing.

[fols. 33-36] Petition for rehearing, covering three pages, filed August 4, 1928, omitted from this print. It was denied without more October 2, 1928.

[fol. 37] IN SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING REHEARING—Oct. 2, 1928

Now at this time the court being fully advised in the premises it is ordered that the petition for rehearing heretofore submitted be and the same is hereby denied.

[fol. 38] [File endorsement omitted]

IN SUPREME COURT OF OREGON

[Title omitted]

PETITION FOR ORDER OF APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Oct. 15, 1928

Considering himself aggrieved by the final decision of the Supreme Court of the State of Oregon in the above entitled cause, Karl Herbring, the respondent above named, hereby prays than an order of appeal be entered herein and for an order fixing the amount of the bond thereon.

Assignment of Errors

Comes now the respondent above named, Karl Herbring and as appellant to the Supreme Court of the United States from the judgment and decision heretofore rendered herein, assigns as error:

1. That the Supreme Court of the State of Oregon erred in reversing the judgment of the Circuit Court of Marion County, State of Oregon, and ordering said court to dismiss this proceeding.

2. That the Supreme Court of the State of Oregon erred in holding that Sub-div. 8 of Section 6388 of the Oregon Laws does not abridge the rights of the appellant Karl Herbring, guaranteed by Section 1 of the 14th Amendment to the Constitution of the United States.

[fol. 39] Prayer for Rehearing

For which errors the respondent above named, Karl Herbring, prays that the said judgment of the Supreme Court of the State of Oregon, dated July 19, 1928, in the above entitled cause, be reversed and a judgment ordered in favor of the said appellant, and for costs.

Karl Hebring, pro Se. Guy E. Kelly, Attorneys for Karl Herbring.

Service of copy of foregoing admitted this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Claire A. Lee, as Insurance Commissioner of the State of Oregon.

[fol. 40] [File endorsement omitted]

IN SUPREME COURT OF OREGON

[Title omitted]

ORDER ALLOWING APPEAL—Filed Oct. 15, 1928

Now on this 15th day of October, 1928, on reading the petition of Karl Herbring, the respondent herein, praying for the issuance of an order herein allowing his appeal to the Supreme Court of the United States from the Supreme Court of the State of Oregon, and it appearing from said petition and the record of the above entitled cause that in the above entitled cause there was drawn in question the validity of a statute of the state of Oregon on the ground of its being repugnant to the Constitution of the United States and that the decision was in favor of its validity and that such petition is a proper petition for the issuance of the said order

Now, therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Oregon, that said appeal be and the same is hereby allowed, and

It is further ordered that the appellant Karl Herbring execute to the appellee Claire A. Lee as Insurance Commissioner of the State of Oregon, his bond with surety to be

approved by the undersigned in the sum of $500.00 conditioned according to law, and that thereupon all further proceeding upon said judgment rendered by this court in said action shall be stayed pending the order and decision of the Supreme Court of the United States upon said appeal.

It is further ordered that the clerk of this court, within sixty days from this date make and transmit to the clerk of the Supreme Court of the United States, under his hand and the seal of this court, a transcript of the record herein containing a true copy of all material parts of the record herein, which shall be designated by præcipe filed with him by either of the parties hereto.

[fol. 41] Done this 15 day of October, 1928.

John L. Rand, Chief Justice of the Supreme Court of the State of Oregon.

Attest: Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon. (Seal.)

Endorsed

STATE OF OREGON,
County of Marion, ss:

Service of copy of Order Allowing Appeal acknowledged this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Clare A. Lee.

[fols. 42 & 43] Bond on appeal for $500, approved and filed October 15, 1928, omitted in printing.

[fol. 44] Citation, in usual form, showing service on I. H. Van Winkle, omitted in printing.

[fol. 45] IN SUPREME COURT OF OREGON

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 15, 1928

To the Honorable Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon:

Please make and transmit to the Supreme Court of the United States, under your hand and the seal of the Supreme

Court of the State of Oregon, a true copy of the following papers on file with you in the above entitled case:

1. The notice of appeal of Karl Herbring from the decision of Claire A. Lee as Insurance Commissioner of the State of Oregon, filed with the Clerk of the Circuit Court of Marion County.
2. Bond on appeal filed therewith.
3. Proof of service thereof.
4. Stipulation of facts dated December 12, 1927.
5. Order of the Circuit Court of Marion County dated February 24, 1928.
6. Decision of the Supreme Court of the State of Oregon filed July 17, 1928.
7. Petition of Karl Herbring for re-hearing.
8. Order denying petition for re-hearing.
9. Karl Herbring's petition for order of appeal.
10. Citation to Claire A. Lee.
11. Order of appeal.
12. Assignment of errors.
13. Bond on appeal.

Karl Herbring, Pro Se. Guy E. Kelly, Attorneys for Appellant, Karl Herbring.

[File endorsement omitted.]

[fol. 46] Service of copy of Præcipe acknowledged this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Claire A Lee.

[fol. 47] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 48] In Supreme Court of United States

Statement of Points to be Relied Upon and Designation of the Parts of the Records to be Printed—Filed Dec. 17, 1928

Comes now the Appellant and adopts his assignments of error as his stat-ment of the points to be relied upon and

represents that the whole of the record, as filed, is necessary for the consideration of the case.

Guy E. Kelly, Attorney for Appellant.

[fols. 49 & 50] IN THE SUPREME COURT OF THE UNITED STATES

Affidavit of Service

Maxine Hunt, being first duly sworn upon oath deposes and says that she is a stenographer in the employee of Mr. Gut E. Kelly attorney for appellant above named; that on the 10 day of December 1928 she served the attached statement of points to be relied upon and designation of the parts of the record to be printed on attorneys for the respondent, I. H. Van Winkle Attorney General, of the State of Oregon, and Willis S. Moore, Assistant Attorney General of the State of Oregon by depositing in the United States Post Office at Tacoma, Washington, a full, true and correct copy thereof addressed to the said I. H. Van Winkle and Willis S. Moore at Salem Oregon and prepaying the postage thereon.

Maxine Hunt.

Subscribed and sworn to before me this 10th day of December, 1928. Thomas MacMahon, Notary Public, Residing at Tacoma, Washington.

Endorsed on cover: File No. 33,899. Oregon Supreme Court. Term No. 590. Karl Herbring, appellant, vs. Claire A. Lee, as Insurance Commissioner of the State of Oregon. Filed December 17th, 1928. File No. 33,899.

FILE COPY

JAN 28 1929

Supreme Court of the United States

OCTOBER TERM, 1928

NO. ~~700~~ 17

KARL HERBRING,
Appellant,

vs.

CLARE A. LEE,
Appellee.

Appellee's Statement Against the Jurisdiction Asserted by Appellant

I. H. VAN WINKLE,
Attorney General of the
State of Oregon,
WILLIS S. MOORE,
Assistant Attorney General of
the State of Oregon,
Attorneys for Appellee.

GUY E. KELLY,
Attorney for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1928

NO. 590

KARL HERBRING,
Appellant,
vs.
CLARE A. LEE,
Appellee.

Appellee's Statement Against the Jurisdiction Asserted by Appellant

As stated at the bottom of page 4 of Appellant's Statement Supporting Jurisdiction:

> The appellee takes the position that the law in question is a condition precedent to the right of a foreign insurance company to do business in Oregon and that therefore the constitution has no application. In this position he was sustained by the supreme court of Oregon.

The stipulated facts upon which the case was submitted to the circuit court for Marion county, Oregon, and from whose decision appeal was taken to the supreme court of the state of Oregon, appear

in the printed record, a copy of which has not been received by appellee. The opinion of the lower court will be found reported in 269 Pac. 236, 240.

Application for the appointment of appellant as an additional insurance agent of the Northwestern National Insurance Company of Milwaukee, Wisconsin, for the city of Portland, Oregon, was required by the defendant insurance commissioner of Oregon to be made by the company for which he was to act. Such applications are governed by the provisions of section 6388, Oregon Laws, which is section 22 of chapter 203, General Laws of Oregon, 1917. The parts thereof material to this case read as follows:

> (1) Foreign Fire Insurance Companies Not to Write Insurance Except Through Licensed Agent. It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid; provided, that this section shall not apply to direct insurance covering the rolling stock and other property belonging to and used in the operation and maintenance of plant and business of railroad corpora-

tions or other common carriers or property in transit while in the possession and custody of railroad corporations or other common carriers and mutual fire insurance companies. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president, manager, or chief executive officer in the United States that this section has not been violated. This section shall not apply to policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state.

(2) "Title" Under Which Fire Insurance Is To Be Written Must Be Registered. Every fire insurance company shall, before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, file with the insurance commissioner of this state the "title" under which it proposes to write any such insurance in the state of Oregon, and such title shall be registered by the said insurance commissioner, together with the name of the insurance company filing such title, and a sample and specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner; and upon paying the fee as hereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

(3) Filing Fee; Certificate. Every insurance company registering a title under this act shall pay to the insurance commissioner a fee of $5 and

the insurance commissioner shall then issue a certificate to the insurance company registering such title, setting forth the name of the company, and attaching to the certificate a facsimile of the title registered and filed as hereinbefore provided.

(4) License of Fire Insurance Agent; Certificate; License Fee. Every insurance company licensed to transact fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state to represent the title registered, and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the provisions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent that (who) is qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March thirty-first following the date of such appointment. Every such agent now representing any such company, or who may hereafter be appointed to represent any such company, provided such agent is qualified as provided in this act, shall be relicensed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such certificate shall be $2 and shall be paid to the insurance commissioner; provided, that the certificate issued to an established agency of any company in any city, town or

village in the state may be transferred to any agent or agency by the insurance commissioner upon proper application of any such company without exacting further fees.

(5) Additional Title. (a) Any insurance company authorized to transact a fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of corporate title by such companies in this act and may issue its policies under such additional title.

(b) Fees. Any such company qualifying to transact business under an additional title shall be subject to the payment of the same fees for the transaction of business under such additional title as are required of such company in the transaction of business under its corporate name, and may appoint agents to transact its business under such additional title in the same manner as provided for companies.

(c) Report. Any company transacting business under an additional title shall report to the insurance commissioner the amount of such business transacted under the additional title, for taxation and departmental purposes, in the same manner and form as such company is required to report the business transacted under its corporate name.

(6) Appointment of Additional Agent. Any such insurance company which is authorized to transact fire insurance in this state in its corporate title and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

(7) Additional Agent in Certain Cities. Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.

(8) Annual License Fee for Additional Agent. Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of $500 for each such agent.

It is contended by appellee that the rights of the appellant in the premises are contingent upon the power of said insurance company to appoint a third agent in the city of Portland, Oregon, and that such appointment cannot be made until it has paid the additional fee of $500 required by subsection 8 of section 6388, Oregon Laws, to be paid by such companies as a condition precedent to their right to appoint such third agents.

The case was decided by the lower court (R....) upon the ground that the provisions of the statute

do not abridge any right guaranteed by the state or federal constitutions (269 Pac. 239).

It is submitted that this court has no jurisdiction of the within cause, and that the same should be dismissed.

Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.

Fire Association of Philadelphia v. New York, 119 U. S. 110, 30 L. Ed. 342.

Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297.

Cheney Brothers Co. v. Massachusetts, 246 U. S. 147, 62 L. Ed. 632.

Hanover Fire Insurance Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372.

I. H. VAN WINKLE,
Attorney General of Oregon,

WILLIS S. MOORE,
Assistant Attorney General
of Oregon,

Counsel for Appellee.

FILE COPY

Office Supreme Court, U
F I L E D
AUG 28 1929
CHARLES ELMORE CROP
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Supreme Court of the United States

OCTOBER TERM, 1928

No. 590 17

KARL HERBRING, APPELLANT

vs.

CLAIRE A. LEE, AS INSURANCE COMMISSIONER OF THE STATE OF OREGON, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

APPELLANT'S OPENING BRIEF

KARL HERBRING, *Pro Se*,
1202 Porter Bldg.,
Portland, Oregon.

GUY E. KELLY,
420 Puget Sound Bank Bldg.,
Tacoma, Washington.
Counsel for Appellant

RAY PRINTING CO., TACOMA

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Supreme Court of the United States

OCTOBER TERM, 1928

No. 590

KARL HERBRING, APPELLANT

vs.

CLAIRE A. LEE, AS INSURANCE COMMISSIONER OF THE STATE OF OREGON, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

APPELLANT'S OPENING BRIEF

This is an appeal to this Court from the decision of the Supreme Court of the State of Oregon upholding the constitutionality of Section 6338 Oregon Laws, the effect of which is to provide that the first agent making application to write fire insurance in any particular fire insurance company in cities having a population of less than 50,000 and the first two agents applying in larger cities, may obtain their agents license upon the payment of an annual license fee of $2.00, but that all others must pay an annual

license fee of $500.00. This decision is printed in the record at page 10, and is officially reported in 126 Ore. 588.

The provisions of Rule 12 have been complied with. The statement supporting jurisdiction is filed herein and this court has found probable jurisdiction.

STATEMENT OF THE CASE

The Facts

This proceeding is entirely statutory, there were no pleadings and the facts were stipulated as follows (R. pp. 3 to 9):

1. That plaintiff is a duly and regularly licensed and practicing attorney with offices in the Porter Building, Portland, Oregon; that for the past fifteen years or more, the plaintiff has followed such vocation and is now in good standing as such attorney and entitled to practice such profession in the courts of the State of Oregon. (R. p. 3.)

2. That the defendant is the duly and regularly appointed, qualified and acting Insurance Commissioner of the State of Oregon, (R. p. 3)

3. That on or about the 13th day of October, 1927, the plaintiff duly filled out upon the form prescribed and furnished by the defendant as Insurance Commissioner, his agent's report and application for a license to issue to him to represent the

Northwestern National Insurance Company in the city of Portland, State of Oregon, which application was in words and figures following:

"Department of Insurance, State of Oregon. Fire, Fire (Automobile), Marine, of Fire and Marine Insurance.

"Agent's Qualification Report to the Insurance Department, State of Oregon.

"I hereby make application for an agent's license to transact_____insurance business in the State of Oregon in compliance with requirements of the law regulating such business.

"I warrant the answers to inquiries in this statement to be full, true and complete, and I understand the law makes them have the same force and effect as if such statements were made under oath.

"Date: Oct. 13, 1927.

"1. Name of applicant: Karl Herbring. (If firm, name members of firm; if corporation, name officers.)

"2. Business address: (Street and number) 1202 Porter Bldg., Portland, Ore.; Residence: 801 Mason St. (Town or City:) Portland, Oregon.

"3. Occupation last twelve months: Attorney.

"4. Insurance companies of any kind represented last twelve months? (Fire, Marine, Life,

Miscellaneous:) None.

"5. Where represented? ------

"6. Has your license ever been refused, suspended or revoked by the insurance department of this or any other state? If so, give particulars. No.

"7. Are you now or have you been the plaintiff or defendant in any suit involving an insurance company? If so, give particulars. No.

"8. (a) Company you now desire license to represent: Northwestern National Insurance Company of Milwaukee, Wisconsin; (b) What business will you transact for this company? (Fire, Automobile, Marin-:) Fire Insurance.

"9. Do you hold this agency for the purpose of insuring property of yourself, your firm or corporation, or of your employer? No. If so, how much other insurance do you expect to write? ------

"10. Give names connected with your agency, including salaried employes, authorized to solicit insurance. None.

"11. Are you sufficiently conversant with the insurance laws of Oregon to properly protect both parties to an insurance contract? Yes.

"12. I hereby agree not to discriminate or misrepresent in any matters of insurance; neither

will I, directly or indirectly, rebate nor split commissions with any agent not licensed in this state.

"(Signature of person or firm desiring license:) Karl Herbring.

"This application is approved and we request that license be granted.

"(Company:) Northwestern Nat'l Ins. Co., by (Designate title of person signing for company:) L. S. Frundenfeld, Special Agent, Porter Bldg., Portland, Oregon."

Date: Oct. 13, 1927. (R. pp. 3 to 5.)

4. That the Northwestern National Insurance Company of Milwaukee, Wisconsin, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and has for many years last past and is now duly qualified to write policies of fire insurance in the State of Oregon and covering property in said state. (R. p. 5.)

5. That on or about the 18th day of October, 1927, the defendant returned the said application of plaintiff to the Northwestern National Insurance Company of San Francisco, California, and enclosed therewith a letter of which the following is a copy:

"October 18, 1927.

"Mr. D. W. Clark, Manager, Northwestern National Insurance Co., 310 Sansome Street, San

Francisco, California.

"Dear Mr. Clark:

"We are in receipt of a letter from Mr. Karl Herbring, Portland, in which he enclosed his check for $2.00 and agent's qualification report filled out by himself.

"As this department can not accept applications direct from an applicant, we are attaching, hereto, application blank which we ask that you please complete and return to this department at your early convenience, and oblige.

"Yours very truly,

"Clare A. Lee,

Insurance Commissioner,

by_____Deputy.

"CMcN/R.

Encls. 1." (R. pp. 5-6.)

6. That the application blank referred to in said letter of October 18, 1927, is in the following form, to-wit:

"Fire, Marine, Fire and Marine, Fire (Automobile), Marine (Inland) Fire and Fire and Marine—Application.

"To the Insurance Commissioner of the State of Oregon, Salem, Oregon:

"The _____ _____ certifies that it has, in compliance with the provisions of the Laws of Oregon, established agencies at the places named

in the following schedule and duly appointed the persons, firms and corporations named in said schedule, who reside and do business at such places, agents for the transaction thereat of the business of _____ insurance so far as they may be legally empowered by their letters of appointment, powers of attorney and the instructions which may be given them by it. Request is therefore made that a license be issued to each such agent authorizing them to act for such company during the year ending April first following the date of this appointment.

"Signed at _____ this _____ day of_____, A. D. 1922.

"_____ _____, Secretary, Manager, General or Special Agent.

"Certificates $2.00 each, whether for individual, firm or corporation.

"This appointment must be signed either by officers of the Company, or by the manager or agent having authority on record with the Commissioner.

"The name of each any every individual member comprising a firm, and the names of the principal officers (president and secretary) of a corporation, must be given.

"Certificate number _____

"Name of agent (individual, firm or corporation) _____

"Individual names of members of firm and principal officers of corporation_____

"County _____

"Place of residence_____" (R. pp. 6-7.)

7. That under date of October 20, 1927, the Northwestern National Insurance Company addressed to the defendant a letter of which the following is a copy:

"October 20, 1927.

"Hon. Clare A. Lee, Insurance Commissioner,
Salem, Oregon.

"Dear Sir:

"In compliance with your letter of October 18th we return herewith, properly signed, the application of Karl Herbring to represent us as agent in Portland.

"Thanking you most kindly for the issuance of the license, we are

Yours very truly,
D. W. Clark,
Manager Pacific Coast Department.

"DWC/T

"Enc." (R. p. 7.)

8. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the Northwestern National Insurance Company a letter of which the following is a copy:

"October 22, 1927.

"Mr. D. W. Clark, Northwestern National Insurance Co.
310 Sansome Street,
San Francisco, California.

"Dear Mr. Clark:

"We are returning, attached, your application for Mr. Karl Herbring, Portland, Oregon, together with his qualification report. Check No. 4806 sent us in payment of the fee is being returned to Mr. Herbring as it was received from his office.

"As your Portland quota is filled by the agencies of John B. Coffey & Company, and the Pallett, Strum, Reed Company, your request for license cannot be granted unless you wish to pay the additional fee of $500.00, as the Oregon Law provides:

" 'Any such insurance company which is authorized to transact fire insurance in this state in its corporate title and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

" 'Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its

own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.'

"In this connection please refer to Section 22c (6338), paragraphs 4, 6, 7, and 8, pages 40-42, Oregon Insurance Laws, 1925.

Very truly yours,
Clare A. Lee,
Insurance Commissioner,
by_____, Deputy."

"CMcN/R.
"Encls." (R. pp. 7-8.)

9. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the plaintiff a letter of which the following is a copy:

"October 22, 1927.

"Mr. Karl Herbring, Attorney at Law,
1202 Porter Building,
Portland, Oregon.

"Dear Mr. Herbring:

"We are attaching, hereto, check No. 4802 for $2.00 written in favor of the Insurance Commissioner of Oregon in payment of fee for license in your favor to represent the Northwestern National Insurance Company. We have today re-

turned your application and qualification report to the San Francisco Office, inasmuch as you would make a third agency for the Northwestern National Insurance Company in Portland, and this is not permissible under the Oregon Insurance Laws, unless the additional fee of $500.00 is paid for such license.

Yours very truly,
Clare A. Lee,
Insurance Commissioner,
by ----------, Deputy."

"CMcN/R.
"Encls." (R. pp. 8-9.)

And it is further stipulated that this stipulation shall take the place of and shall be considered by the court upon the hearing hereof as the return of the defendant Commissioner made in conformity with the statute respecting the same.

The Law

The Oregon "Insurance Code" is a comprehensive statute governing and regulating the entire field of Insurance. It is found in Sections 6322 et seq. Oregon Laws.

It establishes an "Insurance Department" under an insurance commissioner (Sec. 6324) who is empowered to administer, and enforce the law, issue rulings, instructions and orders, certificates and licenses,

and to print and furnish the blank forms for use under the law (Sec. 6326).

The business of insurance (as distinguished from the business of the insurance agent) is restricted to corporations (Sec. 6340); as a condition precedent to doing business in the state each fire insurance company must obtain a license from the commissioner authorizing it to transact its business (Sec. 6365; Domestic: Sec. 6328; Foreign). This license may be revoked by the commissioner if he finds that a company is in an unsound financial condition or if its officers refuse to comply with the provisions of the law. The company may appeal from any decision of the commissioner to the courts (Sec. 6359). The company must file a rating schedule and its policy forms from which it cannot deviate (Sec. 6328). It can make no combination or agreement controlling the rate or discriminating against other companies (Sec. 6361); it can grant no rebates (Sec. 6362) nor overinsure (Sec. 6386). Either it must be governed by the rates of the rating bureau or file its own rates from which it must not deviate, and in this respect there must be no discrimination between risks having substantially the same degree of protection against fire (Sec. 6389). The terms and conditions of the policy are all prescribed by the law (Sec. 6393). The company must file an annual statement upon a form furnished by the commissioner (Sec. 6326) setting forth the gross amount of premiums received by it for taxation purposes, (Sec. 6330), and it can

write insurance only through duly licensed agents. (Sec. 6388).

As a condition precedent to the right of an insurance agent to do business in the State he must secure an agent's license from the commissioner, this is issued upon the payment of a $2.00 license fee, he must be a resident, must write the insurance in a company licensed to do business in the state. One license is apparently sufficient for the agent to write insurance in more than one company providing he so specifies in his application. The agent must countersign all policies and collect all premiums. It is unlawful for any property in Oregon to be insured in an unlicensed company, and for the insured to pay his premiums direct to the Company and any insured so doing is guilty of a crime and his policy is declared void. (Sec. 6333). It is also unlawful for any agent to write insurance in any unlicensed company. (Sec. 6334).

If the agent violate any of these provisions his license may be revoked, and the agent's license may be revoked by the commissioner if he conducts his business in a dishonest manner, misrepresents his policies or the policies of his competitor or conducts his business in such manner as to cause injury to the public or those dealing with him. (Sec. 6334).

If the commissioner revokes an agent's license, or refuses to renew the license, or refuses an original application, he must notify the applicant and set a

time for hearing thereon; the commissioner may swear and examine the witnesses. The commissioner if he refuses or revokes a license must then file in his office an order setting forth his reasons in writing and mail a copy to the applicant, who may then appeal to the Courts, by merely filing a notice of appeal and bond. The commissioner then files with the court his reasons for his act and the matter is summarily heard by the court. (Sec. 6335).

The law further provides that a fire insurance company, whether domestic or foreign, may have but one agent in each city, having a population less than 50,000, and one additional agent in larger cities. If additional agents are appointed the additional agents license fee is $500.00 (Sec. 6388).

This law is exceedingly verbose. In many instances there are repetitions. The sections to which we refer have been fully set out in the appendix hereto.

The section which is attacked in this case is section 6388 Or. L. Subdivisions 1, 4, 7 & 8 contain the provisions of which we complain and are as follows:

"(1) *Foreign Fire Insurance Companies Not to Write Insurance Except Through Licensed Agent*— It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or con-

tract for indemnity or insurance on property situated or located in the state of Oregon, except through or by duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid; provided, that this section shall not apply to direct insurance covering the rolling stock and other property belonging to and used in the operation and maintenance of plant and business of railroad corporations or other common carriers or property in transit while in the possession and custody of railroad corporations or other common carriers and mutual fire insurance companies. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president, manager or chief executive officers in the United States that this section has not been violated. This section shall not apply to policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state.

"(4) *License of Fire Insurance Agent; Certificate; License Fee*—Every insurance company licensed to transact a fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state to represent the title registered, and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the pro-

visions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent that is qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March thirty-first following the date of such appointment. Every such agent now representing any such company, or who may hereafter be appointed to represent any such company, provided such agent is qualified as provided in this act, shall be relicensed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such certificate shall be $2.00 and shall be paid to the insurance commissioner; provided that the certificate issued to an established agency of any company in any city, town or village in the state may be transferred to any agent or agency by the insurance commissioner upon proper application of any such company without exacting further fees.

"(7) *Additional Agent In Certain Cities* — Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or

more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.

"(8) *Annual License Fee For Additional Agent*—Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of $500 for each such agent."

ASSIGNMENTS OF ERROR

The appellant assigns as error:

1. That the Supreme Court of the State of Oregon erred in reversing the judgment of the Circuit Court of Marion County, State of Oregon, and ordering said Court to dismiss this proceeding.

2. That the Supreme Court of the State of Oregon erred in holding that Sub-div. 8 of Section 6388 of the Oregon Laws does not abridge the rights of the appellant Karl Herbring, guaranteed by Section 1 of the 14th Amendment to the Constitution of the United States.

ARGUMENT

The only question presented by this appeal is the constitutionality of the law by which one agent is granted an insurance agent's license upon the payment of a $2.00 license fee, while all others must pay a $500.00 license fee for the same privilege.

We contend:

First, that if the statute be regarded as a corporate regulation, rather than as an individual prohibition, it is unconstitutional, in that it is unreasonable, arbitrary and capricious as an attempted police regulation and must be sustained under the police power of the state or not at all.

Second, that the statute is in reality not a corporate regulation, but an unconstitutional attempt to deprive the individual of his common law right to follow an inherently lawful occupation, in that its purpose and effect is to do this, rather than to regulate the business of the corporation.

POINT I.

Upon the first of these contentions:

As we view the statute it is not a corporate regulation at all, but in view of the fact that the Supreme Court of Oregon in deciding the case, entirely disregarded the rights of the appellant, and decided the case upon the theory that the statute in question is a condition imposed by the Oregon Legislature upon

the right of a foreign corporation to do business in Oregon, we believe we should consider this statute from that viewpoint.

From this standpoint, there are certain propositions which we may concede.

We concede that, under the police power, the state may regulate the insurance business and insurance agents.

We also concede that a state may arbitrarily forbid a foreign corporation from doing its business within its jurisdiction and may therefore require a foreign corporation to comply with any valid regulation the legislature enacts as a condition precedent to its right to do business within its borders.

This raises this question: does the law make the statute in question a condition precedent to the right of a foreign fire insurance company to do business in Oregon?

If we correctly understand the words used by this court and the logic of its decisions, when this court has held that a state may impose upon a foreign corporation any condition it desires to its doing business within its borders, this court merely meant what it said and no more, and did not hold and did not mean to hold that after a state had admitted a foreign corporation within its jurisdiction, it could then impose unconstitutional restrictions upon it.

To illustrate this; the case of *Fire Assurance*

of Philadelphia vs. New York, 119 U. S. 110, the court says:

> "The state, having the power to exclude entirely has the power to change the conditions of admission at any time, *for the future*, and to impose as a condition the payment of a new tax, or a further tax as a license fee. If it imposes such license fee *as a prerequisite for the future, the foreign corporation*, until it pays such license fee, *is not admitted within the state or within its jurisdiction.*" (Italics ours.)

The statute in question provides (Sec. 6388 Or. L. subd. 4):

"*Every* insurance company *licensed to transact a fire insurance business in this state and lawfully doing such business therein*, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city", etc. The very terms of the law, import a prior license to the insurance company to transact business in the State. The appointment of only one agent in each city is not a *condition precedent* to the right of the company to transact its business in the state. It might be argued that the issuance to the company of a license to do business in Oregon is in the nature of a contract between the company and Oregon one of the terms of which is that the company will thereafter appoint only one agent in each city. But this will not solve the difficulty for the reason that the law does not prohibit the

company from appointing additional agents, it expressly authorizes the company to appoint additional agents, it merely provides that the commissioner shall issue the license to the additional agent only upon the payment of the $500.00 license fee.

The court will also notice that the statute by its terms applies to "*every*" fire insurance company. It is obvious that if it is a regulation of the company at all, it is not a regulation applying *only to foreign* fire insurance companies.

Regarding this statute as a regulation of all fire insurance companies licensed to do business in Oregon whether foreign or domestic, the question is, can a state constitutionally require that every fire insurance company within its jurisdiction shall refrain from appointing more than one agent in each city.

This, we respectfully submit, is a very far reaching question. If this law is valid *every* corporation doing *any* business in any state may be prohibited from "appointing" or employing more than one agent in the state.

This law is as much a condition precedent to the right of a domestic fire insurance company to do business in Oregon as it is a condition precedent to the right of a foreign company to do such business. This statute by its terms applies equally to both. It is elementary that the power of the legislature over the conditions upon which a domestic corporate charter may be obtained is as plenary as are its powers

over the issuance of a license to a foreign corporation to come within its jurisdiction. It may at will prohibit the formation of domestic corporations and impose such conditions as it sees fit to their right to exist. So that logically, if this position is sustained, the Court will sanction as constitutional every law which can possibly be conceived if it applies only to corporations. That this court will take such a position is inconceivable.

There is a limit beyond which the state may not go even when imposing the conditions upon which foreign corporations may do business within the state. The Court, for instance, in *Hooper vs. California*, 155 U. S. 647, says (Italics ours):

> "The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the state which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficatious to the fullest extent, *subject always, of course, to the paramount authority of the constitution of the United States.*"

In *Lafayette Ins. Co. vs. French*, 18 How. 404, this court says: (Italics ours)

> "A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter state. The consent may be accompanied by such conditions as Ohio may think fit to impose and these conditions must be

deemed valid and effectual by other states and by this court: *Provided, they are not repugnant to the Constitution and Laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment of all others, or that principle of natural justice which forbids condemnation without opportunity for defense.*"

Would this court sanction as constitutional, for instance, a law which provided that no corporation licensed to do business in the state might "appoint" an agent who was a negro, an Indian, a Roman Catholic or a Jew?

We cannot conceive of it, yet it would be as plausible to argue that such would be a regulation of the corporation and that therefore, the legislature could impose such conditions as it saw fit, as to so argue in the instant case.

We believe that this court will agree with us when we say that any law regulatory of a corporation, if otherwise unconstitutional must be sustainable under the police power of the state, if it is to be sustained at all, provided, of course, the corporation has already been licensed to do business in the state.

As we read the decisions of this court, the rule is that while a state may impose any condition it desires as a condition precedent to the right of a foreign corporation to do business within its jurisdiction,

and to the right of a domestic corporation to exist as an entity, having once admitted the foreign corporation or created the domestic corporation, that corporation is a person within that jurisdiction and is entitled to invoke the protection of the constitution.

Southern R. Co. vs. Greene, 216 U. S. 400;

Gulf C. & S. Co. vs. Ellis, 165 U. S. 150;

Covington & L. T. Co. vs. Sandford, 164 U. S. 578.

This court has recently decided in *Quaker City Cab Co. vs. Pennsylvania*, 277 U. S. 389 (Syllabus):

(1) "The equal protection clause of the Federal Constitution extends to foreign corporations within the jurisdiction of the state, and safeguards to them protection of laws applied equally to all in the same situation."

(3) "A corporation, by seeking and obtaining permission to do business in the state, does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States."

And in *Hanover Fire Insurance Co. vs. Carr*, 272 U. S. 494 (Syllabus):

(1) "A state may not exact as a condition of a corporation doing business within its limits that its rights secured by the Constitution of the

United States may be infringed."

(6) "A state cannot relieve itself of the obligation of granting equal protection of the laws to foreign insurance companies which have met the conditions precedent to doing business therein, by providing that failure to pay a tax imposed upon them justifies a revocation of the license."

(8) "The state may lawfully revoke the license of a foreign corporation to do business within its limits for failure to comply with any valid law governing the conduct of such business."

(9) "A state cannot avoid the obligation to accord to foreign corporations permitted to do business within its limits the equal protection of the laws, on the theory that the relation between the state and the corporation is contractual, and that by coming into the state and engaging in business on the conditions imposed the corporation waives all constitutional rights and cannot object to a regulation of its operation, even though the regulation operating in invitum would conflict with constitutional limitations."

And in *Power Mfg. Co. vs. Saunders*, 274 U. S. 490 (Syllabus):

(2) "A foreign corporation seeking and obtaining permission to do business in a state does not thereby become obligated to comply with, or estopped from objecting to, any provision in the

state statutes which conflicts with the Constitution of the United States."

The law in question provides that every fire insurance company *"licensed"* to do business in the state and *"lawfully doing such business therein"* may appoint an agent, etc.

It further provides that the insurance company must obtain a license from the Commissioner, which license the Commissioner shall issue when the company complies with certain conditions, that the Commissioner may revoke this license under certain conditions; that the company may appeal to the courts from such action on the part of the commissioner. It further provides that the agent must obtain a license, that he must fulfill certain conditions as a prerequisite to obtaining his license, that his license may be revoked under certain conditions and that he may thereupon appeal to the courts. It is obvious that the company's license is not revoked, ipsa facta, upon a revocation of the agent's license, and that the agent's license is not *"a condition precedent"* to the right of the fire insurance company to do business in the state, that it is not *"a prerequisite"* to the *"right"* of the insurance company to do business in the state.

But the law further provides that no company may write insurance except through duly licensed agents. Having received its license, however, the Company may legally conduct business. It may

lend or invest money, purchase and hold, deal in and with property, establish offices, hire employees, and even appoint its agents, and in this respect, appoint as many agents as it desires without limitation. The provision requiring the agent to be licensed, if regarded as a corporate regulation, stands upon the same footing that all the other regulations contained in the law stand. It is a mere regulation, the same as the provision which forbids the company to engage in a rate war, overinsure or deviate from its rates. These are not conditions but mere regulations. Being mere regulations they must be constitutional.

The state has no power to regulate the business and contracts of persons within its jurisdiction except as the same is derived from its police power and it is manifest that the number of agents that a fire insurance company may employ has no bearing upon the public health, safety, morals or prosperity.

REGARDED AS A REGULATION, THE LAW IN QUESTION IS UNWARRANTED AND ARBITRARY, AND THEREFORE UNCONSTITUTIONAL

In *Lawton vs. Steele*, 152 U. S. 133, 137, the Court said:

> "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and

unnecessary restrictions upon lawful occupations * * *.

"In all these cases the acts were held to be invalid as involving an unnecessary invasion of the rights of property, and a practical inhibition of certain occupations harmless in themselves, and which might be carried on without detriment to the public interests."

In *Holden vs. Hardy*, 169 U. S. 366, 398, the court said:

"The question in each case is whether the Legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoilation of a particular class."

In *Dobbins vs. Los Angeles*, 195 U. S. 223, 236; the court said:

"But notwithstanding this general rule of the law, it is now thoroughly well settled by decisions of this Court that municipal by-laws and ordinances and even legislative undertakings to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether, under the guise of enforcing police regulation, there has been an unwarranted and arbitrary

interference with the constitutional right to carry on a lawful business, to make contracts, or to use and enjoy property."

In *Lawton vs. Steele*, 152 U. S. 133-137, the court said:

"To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive but is subject to the supervision of the courts."

In *Smith vs. Texas*, 233 U. S. 630, the court said:

"If the service is public, the state may prescribe qualifications and require an examination to test the fitness of any person to engage in or remain in the public calling. *Re Lockwood*, 154 U. S. 116; 38 L. Ed. 929; 14 Sup. Ct. Rep. 1082; *Hawker vs. New York*, 170 U. S. 189; 42 L. Ed. 1002; 18 Sup. Ct. Rep. 573; *Watson vs. Maryland*, 216 U. S. 173; 54 L. Ed. 987; 30 Sup. Ct. Rep.

644. The private employer may likewise fix standards and tests, but, if his business is one in which the public health or safety is concerned, the state may legislate so as to exclude from work in such private calling, those whose incompetence might cause injury to the public, but, as the public interest is the basis of such legislation, the tests and prohibition should be enacted with reference to that object, and so as not unduly to 'interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.'"

In the case of *State vs. Redmond* (*Wis.*), 114, 137; 14 L. R. A. N. S. 229, 236, the Supreme Court of Wisconsin said:

"It is not every enactment which will to some extent promote the public health, comfort or convenience, which is legitimate. Otherwise, the way would be opened for legislative interference with the ordinary affairs of life to such an extent as to be destructive of many of the most valuable purposes of civil government. An expert on sanitation, or one on the manner of living best calculated to promote long and enjoyable life, who has become an enthusiast in his special study of the matter, could doubtless suggest a multitude of really, or apparently, good rules to be followed: The temperature of the air in sleeping rooms, the proper size of rooms as regards the number of occupants, the arrangement for

frequently changing the air by displacing that within for that without the habitation, the hours for sleeping, for retiring and for rising, the amount and kind of food to eat, the proper number of meals per day, the proper admixture of solids and liquids and length of time, the amount and kind of exercise required, and other things too numerous to mention, might be suggested for a legislative interference and with a provision for a severe penalty for its violation, with a division of the penalty, perhaps between the informer and the public, till one would be placed in a straight-jacket, so to speak, that liberty and the pursuit of happiness, the incentive to industry, to the acquirement and enjoyment of property—those things commonly supposed to make a nation intelligent, progressive, prosperous and great—would be largely impaired and in some cases destroyed. That such an extreme would be regulation run mad, and it is quite improbable, 'tis true, but it would be possible without limitations of some sort, if police law be conclusively legitimate merely because it promotes, however, trifling in degree, public health, comfort or convenience."

Fire insurance agents seem to have been particularly successful in the legislative field. In New York they had a law passed to the effect that no one should be licensed as a broker of fire insurance unless he made that business his principal occupation or

unless he conducted the business in connection with the real estate agency or brokerage business. Houser, a lawyer, attacked the law as being unconstitutional and the New York Court of Appeals, in sustaining that contention, says:

> "The legislation now in question must have been promoted in the interests of those engaged in the insurance brokerage business alone, or in connection with the real estate brokerage business rather than with any view of the public welfare * * *. Why should those who wish to engage in the business of soliciting and placing insurance not be permitted to conduct it as incidental to, or in connection with, any other innocent occupation, except that of real estate brokers? Where the legislature may prohibit a business or an occupation, it may prescribe conditions upon which it may be conducted; but if the business or occupation be useful to the citizen, and it be lawful, the constitution, both of the state and of the nation, guarantees to him the right to pursue it freely, and any arbitrary restriction upon its pursuit should be condemned as an invasion of the guaranty. In varying language, but with the same thought, in very many cases, this court has pointed out that the constitutionality of an act is to be tested by its effect upon the citizen's right freely to pursue lawful occupations; that a statute under the guise of an exercise of police power cannot arbitrarily in-

terfere with that liberty of pursuit; that the protection of the law means equality of opportunity to all in like circumstances and that classification to be valid must not be arbitrary and discriminate against persons without a basis in reason. These principles have become familiar from frequent statement in the decisions and need no citation or discussion of the cases here. They have become constituant elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the laws permit. The statute before us goes far beyond what is proper regulation, and is prohibitory in preventing a person from pursuing the occupation of an insurance broker, except as his principal business or as an adjunct to a real estate business. To use the language in the case of *Wynehamer vs. People*, 13 N. Y. 399, 'this statute passes the utmost limit of regulation and does not even wear a disguise.' The restriction is not in the public interests; it is obviously in the interests of the class, either of insurance, or of real estate brokers. The insurance underwriters are not forbidden to transact their business through brokers; they are required to limit it to the class of brokers authorized by the statute. The plaintiff is a lawyer and presumably the nature of that occupation should well qualify him to make insurance contracts, and there are many mercantile occupations which certainly cannot be

deemed to affect the person's fitness to solicit or to place insurance. But this statute would prevent them from adding to their earnings by pursuing that occupation. To concede the validity of this statute, would be to concede a power to the legislature, in the guise of a regulation, to destroy a lawful business * * *.

"Arbitrarily the statute interferes with the citizen's business pursuits, and by an unreasonable discrimination deprives him of that equal opportunity which the Constitution guarantees to him."

Hauser vs. North British Ins. Co., 42 L. N. S. 1139.

In its opinion the Supreme Court of Oregon makes the statement that this proceeding was initiated by the insurance company saying "The Northwestern National Insurance Company notified the appellant that it had appointed the respondent to act as its agent," etc. This is not substantiated by the record from which it appears that on October 13th, 1927, the appellant here made his application for his agents license tendering his check, and that on October 18th, 1927, the appellee here wrote the Insurance Company asking it to fill out a blank enclosed with that letter which was merely a formal appointment of the agent. (R. pp. 4, 5, 6.)

It is then stated that "*The commissioners refusal to make the requested appointment* was occasioned

by the nonpayment of the fee of $500.00 required by Section 6388 Or. L. as a condition precedent to the right of *any* fire insurance company to appoint such additional agent." (Italics ours.)

This statement is inaccurate. The Insurance Company may appoint as many agents as it desires under the law. There is no fee required of the Company by the law as a condition precedent to the appointment of the agent. The fee is a condition precedent *to the issuance of the agents license by the commissioner*, and the agents license is a condition precedent to the right of the agent to do business in the state, and not a condition precedent to the Company's right to do business in the state.

The opinion then states:

"There is no reason suggested or conceived why a foreign insurance company applying to do business in this state should not comply with both of the sections and subdivisions mentioned. Therefore, a foreign corporation being required to comply with the statute, in order to be entitled to appoint agents and consummate its business in the state of Oregon, it follows, as the night follows the day, that in order for an agent to obtain a license to represent such a foreign corporation there must first be a compliance by the foreign corporation with the requirements of our state law."

This statement is inaccurate, Section 6388 Or. L. subd. 4 provides "*Every* insurance company *licensed to transact a fire insurance business in this state and lawfully doing such business therein*, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city," etc. It is apparent therefore that the law applies to domestic as well as foreign insurance companies, and that the insurance company must be *licensed to transact business in the state and lawfully doing such business therein* before the appointment of the agent.

Since the law further prohibits even a licensed agent from writing insurance in any other than a company which has been duly licensed to do business in the state, the right of the company to do business in the state necessarily precedes the right of the agent to place insurance policies in the company. The appointment of the agent and the issuance of the agent's license are predicated upon the license issued to the company authorizing it to do business in the state; while it is true that the agent may not write the insurance until he has obtained his license, the right of the company to do business in the state is in existence. The act of appointing an agent in the State, is a doing of business within the state, and an exercise of the rights conferred upon the company by virtue of its license.

We submit therefore that the Supreme Court of Oregon manifestly erred in holding the issuance of an agent's license to be a condition precedent to

the right of a foreign insurance company to do business in the state.

Other provisions of the law provide that no insurance company may write insurance except through licensed agents and that if it violates this provision its license may be revoked, it is apparent therefrom that the agent's license is not a condition precedent to the company's right to do business.

This is also apparent from the provisions which give the commissioner power to revoke an agent's license because of his misconduct, manifestly such revocation has no bearing upon the company's right to do business in the state.

The opinion further states:

> "The main purpose of the provision of the statute appears to be in the nature of a restriction on a foreign insurance corporation. It is purely a legislative question, 14 A. C. J. p. 1248. Sec. 3949."

This statement is incorrect for the reason that, if regarded as a regulation of the corporation, it applies equally to domestic as well as foreign corporations, and in reality the purpose is to restrict the number of insurance agents, to grant a monopoly to a few agents. There can be no doubt but what the effect of this law is to deprive the appellant of the right to do the same business that John B. Coffey & Company and the Pallett, Strum, Reed Company are

doing in Portland, as is shown by the appellee's letter (R. p. 7.) These concerns receive their license to transact their business upon the payment of a $2.00 license fee, the only reason that appellant is refused like treatment is because they are ahead of him in point of time.

It is clear that the only condition precedent to the right of any insurance company, whether domestic or foreign, to do business in Oregon, is the obtaining of the corporate license from the commissioner. This authorizes the company to conduct its business in a legal way and, of course, will not protect the company from the consequences of illegal methods of doing business. The state has the undoubted right to require all insurance agents to be licensed and to require all licensed insurance companies to employ only licensed agents. But if this statute requiring the $500.00 "additional agents" license fee be regarded purely as a regulation of the corporation (with which view we do not agree) we respectfully submit that the statute is unconstitutional. The court will not lose sight of the fact that the Northwestern National Insurance Company is not a party to this proceeding and that its corporate rights are not before the court except incidentally. Herbring made this application for an agent's license. He was the "applicant" mentioned in the law. The law gives him the exclusive right to appeal to the Courts and it is he who has exercised that right and has prosecuted this appeal.

But regarding this matter from the standpoint of corporate rights: Can a state constitutionally restrict the conduct of an inherently lawful, harmless business within its borders to corporations, then provide that all agents of these corporations must be licensed and then restrict the number of agents who may be licensed or, what amounts to the same thing, provide that after the first agent's license is issued, any additional licenses shall be issued only upon the payment of a $500.00 or a $5000.00 annual license fee.

It is elementary that once a state admits the foreign corporation within its jurisdiction, in so far as its constitutional rights are concerned, it becomes a person to the same extent that a domestic corporation is a person. Its property may not be taken without compensation, its constitutional rights to resort to the courts may not be taken from it, its contracts may not be invalidated, etc.

As we have stated, the law in question requiring the $500.00 annual license fee for the "additional agents" license, applies to the agents of every fire insurance company, whether domestic or foreign. If this provision is unconstitutional, if or when, applied to the agents of a domestic corporation, it is also unconstitutional when applied in the instant case.

We are confident that this court will never sanction a rule which would permit a state, under the guise of a police regulation, to restrict the conduct of an inherently innocent business to corporations, and

then restrict the number of agents which such corporations may employ, when such restriction has no reference whatever to the police power of the state.

POINT II.

"The Courts are not bound by mere forms, nor are they to be misled by mere pretentions, they are at liberty—indeed they are under the solemn duty to look to the substance of things whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority."

Mugler vs. Kansas, 123 U. S. 623.

"Whether it (the statute) is or is not repugnant to the constitution of the United States, must be determined from the natural effect of such statutes when put into operation and not from their proclaimed purposes."

Lochner vs. New York, 198 U. S. 45-64.

What is the natural effect of this statute? There can be but one answer to this question. Its effect is to prohibit many individuals, who otherwise would obtain agent's licenses, from pursuing that business. Has it any other effect? If so, the legal representatives of Washington, New Mexico and Oregon have failed to point it out.

It is true that the Supreme Court of Oregon in its opinion states:

"There is some reason for the requirement for the restriction contained in the statute limiting or tending to limit the number of agents of foreign insurance corporations as a matter of regulation and supervision. While no specific requirements are contained in the law as to such agents keeping a record, it is well known that a record of the issuance of fire insurance policies are kept by such agents. And a less number of agents would doubtless require less effort of supervision and would facilitate the supervision of insurance business to a certain extent, as the commissioner could verify reports made by foreign insurance companies for the basis of taxation, by an examination of the books and records of agents."

But the law nowhere requires the agent to keep any record, nor does it require him to make any report to the commissioner.

So that the sole purpose of this law is to secure established fire insurance agencies against competition—to grant to them a monopoly in the business. Its sole effect is to prohibit the individual from engaging in an inherently lawful occupation. This law provides that the business of insurance within the state shall be restricted to corporations. By virtue of the fact that the insurance business is subject to the police power of the state this provision is constitutional.

That the State may so regulate a business subject to the police power was decided in *Weed vs. Bergh*,

25 L. R. A. N. S. 1217, where the court says:

> "The objection that the law absolutely prohibits an individual banker from doing business, and hence cannot be considered as valid regulation, is plausible, but not convincing. Many police regulations have the effect of prohibiting the business unless certain conditions are first complied with. The legislature says: 'If you wish to engage in this quasi public business of banking you must first secure a corporate charter.' It does not say 'you cannot go into it,' but 'you must go into it in a certain way which is deemed the safest for the public.' The obtaining of a bank charter is made by the act practically a matter of course. Three adult residents of the state may at any time associate together, execute the required articles and file them and the corporation is formed. The danger that any citizen who wishes to go into the banking business will be unable to find two other adult residents who will be willing to join in executing the written articles of incorporation is so small as to be negligible. People can do banking as before, except that they must do it by means of a corporate organization."

The appellant therefore cannot carry on the business of insurance within the state and he cannot be an insurance agent because the quota of all licensed insurance companies has been filled in Portland.

Carry this to a logical conclusion. The barbers of

Oregon may go before the legislature and persuade it to enact a law to the effect that their business shall be restricted to corporations and that no barbering corporation shall "appoint" more than one agent or conversely that every barbering corporation shall "appoint" at least six agents. The bankers, the doctors, the attorneys, the auctioneers, the butchers, the bakers and the candle stick makers may all fall in line. Would this or any other court sustain such laws upon the theory that such laws were corporate regulations and that the legislatures have plenary power over the conditions governing the grant and exercise of corporate franchises? There is no logical distinction between the instant case and the assumed cases. These assumed cases may seem absurd and utterly improbable but, as this court knows, laws have been passed to exclude chinamen from the laundry business, individuals from learning or conducting the barber business, and all persons from conducting employment agencies.

In a comparatively recent case decided in the District Court of the State of Washington by three judges, the facts were these:

The legislature of the State of Washington had enacted a statute which ostensibly regulated the barber business and contained numerous provisions with the apparent object of protecting the public health.

The effect of this law, however, was to limit the number of barber schools or colleges and the number

of persons who could qualify as barbers in the state. The Court, in holding the statute unconstitutional, says:

> "While Section 14 on its face appears to make elaborate provision to guard the health of patrons of barber shops, it is difficult to avoid the impression that its practical effect is to limit the number of barber schools or colleges, and the number of students, graduates or apprentices. What, if any, reason could exist why the course is 'to be completed in six months,' is not apparent. Nor is it apparent how the public health is to be protected by the age restrictions. The entire section, we think, has no real or substantial relation to the public health, is unreasonable and unnecessary, and an invasion of rights secured by the Constitution."

Marx vs. Maybury, 30 F. (2d) 839.

In its opinion the Supreme Court of Oregon virtually admits that the purpose of this law is to limit the number of individuals who may follow the business of fire insurance agents. This admission practically decides this case. It certainly appears, we believe, from the facts of this case that the effect of the law is to deprive the appellant of the right to do this business, which from time immemorial has been conducted as a "side line" by lawyers, real estate men and others. It is one of the recognized lines of business and we do not believe that any court would hold that every indi-

vidual has not a common law right to follow it.

The only legitimate purpose which the Supreme Court of Oregon could suggest, was that "there is some reason * * * for the restriction * * * limiting the number of agents * * * as a matter of * * * supervision. While no specific requirements are contained in the law as to such agents keeping a record, it is well known that a record * * * (is) kept by such agents. And a less number of agents would doubtless require less supervision and would facilitate the supervision of insurance business to a certain extent as the commissioner could verify reports made by foreign insurance companies for the basis of taxation, by an examination of the books and records of agents."

So that the best which can be said of this law is that it may have some remote or indirect bearing upon the supervision of insurance companies, while its direct effect is to deprive the individual of his constitutional rights.

This being true, the question which naturally suggests itself is this: Even assuming that the law remotely or incidentally affects corporate rights, may the state for that reason alone deprive the individual of his constitutional right to follow an inherently harmless business in a lawful way? There appears to be no reason whatever behind the law other than the grant of a monopoly to established agencies. There are no "exceptional circumstances" requiring the law;

"no abuses" which have "grown up" in connection with it, which this law will correct. The courts are committed to the logical rule that the legislature has plenary powers over the exercise of corporate franchises and many prescribe such conditions as it sees fit to exercise thereof; also that any business which is subject to the police power of the state may be restricted to corporations.

On the other hand, the right of the individual to follow any lawful occupation is guaranteed by the Constitution.

If the rule and the Constitution do actually conflict, the Constitution will prevail.

A condition imposed upon the exercise of the corporate franchise which has the effect of depriving the individual of his constitutional rights must be invalid, for the Constitution is fundamental and the basis of all law. Any law which conflicts therewith is invalid, no matter what the reason behind the law may be, unless the law be a valid police regulation.

In this connection, manifestly not every regulatory enactment by the legislature is a condition to the exercise of the corporate franchise. The facts of this case, as stipulated are to the effect that the company "has for many years last past and is now duly qualified to write policies of fire insurance in the State of Oregon and covering property in said state." (R. p.

5), and that the company is doing business in Portland through two agencies (R. p. 7). It certainly, therefore, is not a condition imposed upon the exercise of the corporate franchise. On the other hand, the obtaining of this license, which under the law can be issued only upon the payment of a $500.00 annual license fee, is manifestly a condition upon the appellant's right to do business.

The law therefore affects the corporate business only indirectly and remotely, if at all, while it directly affects the appellant, and denies to him the right to do business upon the same terms that others are actually doing the same business. We respectfully submit that the constitutional rights of the individual are too sacred to be so undermined. In construing the Constitution the courts have left no loop-hole whereby this can be legitimately done.

In *Adkins vs. Children Hospital*, 261 U. S. 525, this court uses the following language:

> "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances. Whether the circumstances exist in the present case constitutes the question to be answered *

* *.

"But, nevertheless, there are limits to the police power, and when these have been passed, it becomes the plain duty of the courts, in the proper exercise of their authority, to so declare. To sustain the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of its constituent members."

In *Smith vs. Texas*, 233 U. S. 630, the court says:

"Liberty means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

In *Allegeyer vs. Louisiana*, 165 U. S. 578-579, the court uses this language:

"The liberty mentioned in the constitution means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation,

and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In *Adams vs. Tanner*, 244 U. S. 590, this court said:

"Because abuses may, and probably do grow up in connection with this business, is adequate reason for hedging it about with proper regulations. But this is not enough to justify the destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite earnestly to maintain that its suppression would be in the public interests. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guarantees of the constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

In this connection, the observation of the Supreme Court of Missouri in the case of *Moler vs. Whisman*, 40 L. N. S. 629, in holding unconstitutional a law passed in the interests of the barbers, which provided that before anyone could be a licensed barber

in the state, he would have to work as an apprentice for two years, during which time neither he nor his employer could charge any remuneration for his services, seems to us to be pertinent:

> "Possibly some barbers, like some lawyers and other persons who have obtained successful and remunerative positions in professional and commercial life, become anxious to shut out competition by 'burning their bridges behind them,' so to speak, but such a scheme is entirely un-American, because it is the policy of a free commonwealth to encourage thrift and industry among its citizens and to keep the door of opportunity ajar so that every qualified and deserving person who so desires may enter thereat."

The proposition is thoroughly well settled that even though a business may be such that it may be regulated, nevertheless if the right to follow the business is a common law right it cannot be taken away from the individual, provided he conforms to the regulations imposed. This is expressed by the Supreme Court of Wisconsin in the case of *Weed vs. Bergh*, 25 L. R. A. (N. S.) 1217, as follows:

> "1. There are some fundamental propositions so well settled that it is only necessary to state them. Among these are the following: First, banking is a common law right pertaining equally to every member of the community; second, being a common law right it cannot be prohibited under

a Constitution like ours, which recognizes the right, and grants power to the legislature to regulate and supervise it; third, under such a Constitution as ours, banking may be regulated so far as may be reasonably necessary to secure the public welfare and safety, but it must be true regulation, not prohibition under the guise of regulation."

In *State vs. Moore*, (N. C.), 32 L. R. A. 472, 474, the court says:

"These authorities are referred to for the purpose of showing that, under the mere guise of a police regulation, a person cannot be unduly restricted, or substantially prohibited from pursuing a lawful occupation. In order to justify such legislation, the business must itself be of such a nature that its prosecution will do damage to the public, whatever may be the character and qualifications of those who indulge in it. Mr. Tiedeman, in his very reliable work (Pol. Powers. p. 290) remarks: 'In order to prohibit the prosecution of a trade altogether the injury to the public, which furnishes the justification for such a law, must proceed from the inherent character of the business * * * But if the business is not inherently harmful, the prosecution of it cannot rightfully be prohibited to one who will conduct the business in a proper and circumspect manner. Such a one would be deprived of his liberty without the due process of law. It is on

the ground of the inherently harmful and dangerous character that the keeping of gaming tables or the selling of intoxicating liquor, or other things of a demoralizing nature, may be absolutely prohibited."

In *Butcher's Union, Etc. vs. Crescent City, Etc., Co.*, 111 U. S. 746 (762, 764), this court says:

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen."

In *Powell vs. Pennsylvania*, 127 U. S. 678, this court says:

"The main proposition advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general

proposition as embodying a sound principle of constitutional law."

In *Dent vs. West Virginia*, 129 U. S. 114, 121, this court says:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may, in many respects, be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them—that is, the right to continue their prosecution, is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can thus be taken."

In *Holden vs. Hardy*, 169 U. S. 391; this court says:

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law, which undertakes to deprive any class of persons of the general power to acquire

property, would also be obnoxious to the same provisions. Indeed, we may go a step further and say that as property can only be legally acquired as between living persons by contract, that the general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid."

In *Williams vs. Fears*, 179 U. S. 270, 274, this court says:

"And so as to the right to contract. The liberty of which the deprivation without due process of law is forbidden means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion, the purposes above mentioned, * * * although it may be conceded that this right to contract in relation to persons or property or to business within the jurisdiction of the state may be regulated and sometimes prohibited when the contract or business conflicts

with the policy of the state as contained in its statutes. *Allgeyer vs. Louisiana*, 165 U. S. 589-591, 41 L. Ed. 835, 836, 17 Sup. Ct. Rep. 427; *Holden vs. Hardy*, 169 U. S. 366, 42 L. Ed. 780, 18 Sup. Ct. Rep. 383."

In *Lochner vs. New York*, 198 U. S. 45, this court says:

"The statute necessarily interferes with the right of contract between the employer and employees concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to its business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. *Allgeyer vs. Louisiana*, 165 U. S. 578, 41 L. Ed. 17, Sup. Ct. Rep. 427."

In *Adair vs. United States*, 208 U. S. 161, this court says:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering it."

In *Smith vs. Texas*, 233 U. S. 630, this court says:

"Life, liberty, property and the equal protection of the law, grouped together in the consti-

tution, are so related that the deprivation of any one of these separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

In *Coppage vs. Kansas*, 236 U. S. 1, this court says:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no honest way to acquire property, save by working for money * * *."

In *Truax vs. Raich*, 239 U. S. 33, this court said:

"It is sought to justify this act as an exercise of the power of the state to make reasonable classification in legislating to promote the health, safety, morals and welfare of those within the jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that it is right to work for a living in the common occupations of the community that it was the purpose of the amendment to secure."

This law has been before the courts of Washington and New Mexico, where the same contentions were made in an attempt to sustain the law as are made here. In both states it was held that the attempt to limit the number of fire insurance agents and thus monopolize the business was unconstitutional and that it is the business of the agent and not the business of the insurance company which is affected.

In the Washington case, *Ferrell and Northwestern Nat'l Insurance Company vs. Fishback*, 130 Wash. 490; 228 Pac. 516; 36 A. L. R. 1507, it is said:

"The Legislature in 1923 amended the Insurance Code by Chapter 26, Session Laws 1923,

which provides that no insurance company, writing fire or automobile insurance, shall have more than one agent in any city of this state having a population of 50,000 or less; or more than two agents in cities of over 50,000 inhabitants, and other parts of the Insurance Code provide that the insurance commissioner shall issue a license to insurance agents, which license shall be revoked in the event the agent conducts his business in a dishonest manner or misrepresents the policies of other agents or is guilty of conduct injurious to the public or those dealing with him. This action is to determine the constitutionality of that portion of the act of 1923 which prohibits more than one agent of any company in any city having 50,000 or less people or more than two agents in any city of over that population; it being the claim of the appellants that the act is in conflict with Section five and twelve of Article 1 of the State Constitution and the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"The facts are that the Northwestern National Insurance Company is a fire insurance company organized under the laws of the State of Wisconsin which for many years has been authorized under the laws of this state and the permits of the state insurance commission to write policies of fire insurance in the State of Washington. The appellant Van R. Ferrel has for sixteen years

been engaged in the insurance business in the city of Tacoma, which is a city of over 50,000 population, as agent for many fire insurance companies and for the purpose of transacting that business he maintains an office in that city. He has been an agent of the Northwestern National Insurance Company since January 1, 1922, and upon his application for a license no objection was made by the respondent insurance commissioner of this state as to his qualifications or of his character or the manner in which he conducted his business. In October, 1923, Ferrel made application in the manner and upon the forms provided by the insurance commissioner, and asked that an agent's license be granted him to represent the Northwestern Company as agent in the city of Tacoma, which at that time had already two agents in that city.

"The application of appellant for the license was refused on that ground; the respondent taking the position that he was precluded from issuing the license by the provisions of the law to which we have referred.

"The question is whether the portion of the act under consideration denies to appellant the equal protection of the law and deprives him of his property without due process of law.

"At the outset it is to be remembered that the occupation of insurance agent is a lawful

business and not one which it is within the power of the state to prohibit, and, as is conceded by the respondent's attorneys, any individual has an inherent right to follow an ordinary lawful calling, and the deprivation of that right would be the taking of property without due process, and that the right to contract for one's services in a lawful calling is a right guaranteed by the Constitution, and that under the Constitution every individual is entitled to all privileges and immunities granted to those similarly situated. It is contended, however, that the insurance business is not such an ordinary private business that it may not be regulated in accordance with the needs of public welfare, and it may be conceded that the courts have held that the insurance business is thus subject to legislative regulation. *Germain Alliance Insurance Co. vs. Lewis*, 233 U. S. 389, 34 Sup. Ct. 612, 53 L. Ed. 1011, L. R. A. 1915 C, 1189; *National Union Fire Ins. Co. vs. Wanberg*, 260 U. S. 71, 43 Sup. Ct. 32, 67 L. Ed. 136.

"But we do not acquisce in the view that because the insurance business may be subject to supervision that it is any less a private business. It is true that the business is one in which a great many members of the public are interested, but this is true of nearly every business which occurs to mind. The public interest in the insurance business is no greater than the public in-

terest in the practice of medicine, dentistry, law, and the sale of groceries, drugs, wearing apparel, and the conduct of every human activity which supplies the wants or desires of men and women. It may be that in the public interest these various professions and commercial activities can be made subject to regulatory legislation, but such regulation must, of course, be reasonable. The right of every individual to engage in any lawful business cannot be prohibited, unless that prohibition is based upon some reason which is designed to protect the public morals, health, safety, or welfare. In the instant case there is no question that the legislation is not protective of the public morals, health or safety and the only question is whether it has any reasonable relation to public welfare. It has been held that the business of writing insurance may be regulated. *German Alliance Insurance Co. vs. Lewis, supra.* But the contract of the agent with the company is not a contract which affects the public generally as does the business of insurance. The right to regulate the insurance business was sustained only as to those matters which affect the general public, and the general public is not concerned with the number of agents which the insurance company may employ. In *La Tourette vs. McMaster*, 248 U. S. 465, 39 Sup. Ct. 160, 63 L. Ed. 362, a state statute was sustained which provided that insurance brokers should be agents both of the company and the

insured and should be residents of the state in which they write insurance. But the basis of that decision was that it was a lawful regulation to require the agent to be a resident of the state in which he wrote insurance, where he could be under the jurisdiction of the state officials, and such a regulation is reasonable.

"But the act of 1923 is not an attempt to regulate the insurance business. It is in effect nothing more than the creation of a favored class who are permitted to engage in the lawful business of acting as insurance agents to the exclusion of every one else from that business, and this excludes a great number of persons who from time immemorial have acted as insurance agents. We all know that real estate agents, lawyers, and persons following many other lines of business have been accustomed to write insurance as a "side line." We cannot but feel that the Legislature had in view no welfare of the public, but that this legislation is an attempt to monopolize the business of writing insurance. * * *

"Authorities might be multiplied until the perusal of them would become exhausting, to the effect that in any of these matters, where the Legislature is interfering with lawful business, that the interference must have some fundamentally sound reason back of it. No such has been suggested in support of this legislation. The act itself, unlike most acts in the later years, attempt-

ing to prescribe restrictions on human endeavor contains no statement of its high and lofty purpose and it is left to conjecture and the limited field of judicial knowledge to create some theory upon which can be predicated the reasonableness of this statute. It is, as we have already said, not a statute which has anything to do with the regulation of the insurance business so that the insured may not be imposed upon and shall at all times receive fair and equitable treatment; it is merely an interference with what has always been one of the ordinary businesses engaged in by whoever saw fit to do so; it prescribed no mental or moral qualifications, establishes no standard of conduct or experience, leaves the selection of the agents entirely within the discretion of the insurance company, and does nothing in the way of promoting public welfare, but does afford a splendid opportunity for the private gain of a few. A regulation might be well conceived as promotive of the public welfare which provided that before a person could act as an insurance agent he must possess certain qualities of mind or character, but here we have nothing of that sort. The unfit, the unscrupulous, the dishonest, and rapacious agent may be appointed, and the experienced, honest and deserving who have devoted a life time to their business may be excluded, for no other reason than that in their community the quota is already filled.

"The record in this case shows that appellant Ferrel is in every way qualified to act as an agent, and that he is denied a license merely because in his community two other agents have already received their licenses. The statute is unreasonable and is therefore violative of the appellant's constitutional rights, and the judgment which is appealed from is reversed."

The Supreme Court of New Mexico in the case of *Franklin Fire Insurance Company and Espe vs. Montoya*, 251 Pac. 390, wherein the same questions were involved, says:

"An application to the superintendent of insurance by Franklin Fire Insurance Company and Theodore N. Espe for the issuance of a license to Espe, as an agent in Santa Fe, and an appeal to the state corporation commission having failed, it was sought, by mandamus, to compel such issuance. The corporation commission threatening to cancel the company's license to do business in the state because of such application, said company sought, by injunction, to prevent such cancellation. Relief in both cases having been denied in the district court, both were appealed. As the same facts and law are involved in both cases, they have been submitted and will be decided together.

"Chapter 135 of the Laws of 1925 is entitled: An act relating to insurance and to codify the

insurance laws of the State of New Mexico. It was no doubt intended as a comprehensive code to regulate insurance companies, both foreign and domestic, in their dealings with the citizens of this state. Section 69, in so far as material to this inquiry, provides:

"'It shall be unlawful for any company licensed to transact an insurance business in the state of New Mexico to appoint more than one agent in any city, town or village for each kind of insurance that the said company is licensed to transact, with power to issue or countersign insurance contracts, or otherwise obligate the company, and the superintendent shall not issue more than one license in the name of an agent of any individual company in each city, town or village for each kind of insurance that the said company is licensed to transact.

"'Any company or agent violating the spirit or intent of this section shall have its license suspended.

"'This section shall not apply to life insurance companies.'

"Appellants predicate their rights to the relief of mandamus and of injunction upon the unconstitutionality of this section. Counsel for appellees, the state corporation commission and the superintendent of insurance, concede that if sec-

tion 69 is unconstitutional, appellants are entitled to the relief.

"It is contended that section 69 is in violation of the due process of law provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States, and of the similar provision (Article 2, Sec. 18) of the Constitution of this state, and that it is also in violation of Article 4, Sec. 26, of the Constitution of New Mexico, prohibiting the legislative grant of special rights, franchises, privileges, immunities, or exemptions. Appellees defend the section as a valid exercise of the police power to regulate fire insurance, as a business clothed with a public interest.

"*Northwestern National Ins. Co. et al. vs. Fishback*, 130 Wash. 490, 228 p. 516, 36 A. L. R. 1507, is cited and relied upon by appellants, and is the only case directly in point which has been brought to our attention. The majority of the court in that case held that a similar provision in the Washington Code was not an attempt to regulate the insurance business, but was merely an unwarranted restriction sought to be imposed upon the occupation of insurance agent; that while it might be conceded that the insurance business in general was clothed with such a public interest as to render it subject to reasonable regulation for the general welfare, it did not necessarily follow that the insurance agency business, considered separately,

was not a strictly private business. It was held, therefore, that the section there in question, if permitted to stand, would deprive citizens of the state, without due process of law, of their right to engage in a lawful calling, and to enter into lawful contracts for their services, and would at the same time secure to other citizens of the state special privileges not inuring equally to all.

"The dissenting opinion of Parker, J., representing the views of the minority, considers that no constitutional rights of the citizen there applying for the license were involved. It take the view that the provision in question is a reasonable regulation of insurance companies for the public welfare, and that any incidental privilege to one citizen, and limitation of the right of another, resulting therefrom, is inconsequential. This is, in substance, the position taken by the appelles in the case at bar.

"In *German Alliance Ins. Co. vs. Lewis*, 233 U. S. 291, 34 S. Ct. 612, 58 L. Ed. 1011, L. R. A. 1915c, 1189, the Supreme Court of the United States held that the business of insurance is one clothed with a public interest, so that the states, in the exercise of the police power, may regulate their rates. It was there pointed out that such business might be, and had been, regulated as to its dividends, its investments, form and extent of its policies, by prohibiting discriminations, and rebates, and by limiting its risks. Such regula-

tions, perhaps, do not exhaust the police power; but no case has been brought to our attention holding that the insurance agency business, as such, is subject to regulation. We are not called upon to decide whether it is or is not. It is sufficient to say that it is an ordinary business, familiar in every community. Hardly any fire insurance agent contents himself with the representation of one insurer. The larger ones represent many. An agency contract is valuable property, and the right to enter into such a contract, and to engage in that business, is a valuable right. If, by law, those persons entrenched in the business with agency contracts are secured from competition, they have been granted a special privilege not enjoyed by other citizens not so entrenched. It may be conceded for the purposes of this case that constitutional provisions intended to preserve the rights of individual citizens may sometimes be forced to yield to the public welfare. It should first appear, however, that it is the public welfare which is involved, rather than the interests of a favored few.

"A reading of chapter 135 discloses no reasonable connection between the scheme of regulating the business of fire insurance therein developed and the restriction in question. Many provisions are therein contained in the interest of the insured public. For the enforcement of these provisions, wide visitorial and supervisory powers are given to the superintendent of insurance. These powers

seem to be ample for the enforcement of the provisions. As to the conduct of the business of fire insurance agencies, there are no regulations; no records are required to be kept by them, and no reports made. It seems to be contemplated that the insurance department of the state is to deal directly with the insurance companies. So we are not impressed with the soundness of appellees' argument that the regulation of fire insurance companies is made easier and less expensive by the provision that each company shall have but one representative in a town.

"It is true that certain practices by insurance agents are prohibited under penalties and forfeiture of license. Most of these provisions relate, it appears, especially to life insurance. We find no restrictions upon the conduct of fire insurance agents seeming reasonably to require visitation and supervision of them, and we find nothing in the statute to satisfy us that the Legislature intended to establish any such control over them. In the dissenting opinion in the Washington case, it is pointed out that their statute requires the agent to keep a complete record of all transactions. Such a provision furnishes some ground for arguing that the legislature considered either that such record would aid in the supervision of the fire insurance business or that the agency business required supervision. We have no such provision here.

"It is urged by counsel for appellees that there is a strong presumption in favor of the constitutionality of the statute, and that the reasonableness of a police regulation is a question, in the first instance, for legislative decision, and that, the Legislature having adopted such a regulation, there is a presumption in favor of its reasonableness. Before these principles can operate, however, it should appear that the Legislature regarded the restriction as a reasonable regulation. There are many provisions of chapter 135, the purpose of which is manifest. They contribute to and facilitate state supervision of corporations authorized to make insurance contracts with citizens of New Mexico. Wherein section 69 contributes to such general purpose does not appear from the act itself, is not satisfactorily shown in the argument, and has not been discovered by us. It stands alone, apparently expressing legislative intent to deprive some persons of property without due process and to grant special privileges to others. No other purpose appears. No other substantial result follows. Not regarding it as an attempt to exercise the police power, we are not called upon to consider the extent of such power, nor the extent to which, when invoked, it will prevail over the constitutional limitations in question."

The court will notice that the observations of the Supreme Court of New Mexico are pertinent in this case.

There are no regulations as to the conduct of agencies, no records are required to be kept by them, no reports are made by them.

In the light of the opinions announced by these courts, we invite the court to consider the provisions of the Oregon statutes with some particularity. We believe therefrom that it will conclusively appear that the law in question is not a regulation of the insurance company or of the insurance business, but is an unwarranted attempt to interfere with the individual and to monopolize the business for the benefit of the favored few.

The business of insurance is restricted to corporations; as a condition precedent to doing business in the state each corporation must obtain a license from the Commissioner, and file a rating schedule and its policy forms from which it cannot deviate. This license may be revoked by the Commissioner if he determines it to be in an unsound condition or for its failure to obey any of the provisions of the law. The insurance company may appeal to the Circuit Court of Marion County from any such order or decision. It can make no combination or agreement controlling the rate or discriminating against other companies, it can grant no rebates, nor overinsure. Either it must be governed by the rates of the rating bureau or file its own rates with the Commissioner, from which it must not deviate and in this respect there must be no discrimination between risks having substantially the

same degree of protection against fire. The terms and conditions of the policy are all prescribed. The company can engage in no "rate war." It must file an Annual Statement upon a form furnished by the Commissioner, setting forth the gross amount of premiums received by it for taxation purposes, and can write insurance only through duly licensed agents.

It is apparent that the "agent" is a mere solicitor; he has no control over either the terms of the policy or the rate to be charged. He makes no report to the Commissioner of the business which he does or the premiums collected by him. He is not even required to keep records. It is, therefore, entirely immaterial to the public generally whether the insurance company has one or more agents. It is entirely immaterial to the Commissioner whether the company has one or more agents since the only thing that the "agent" does is to solicit and deliver the policy and collect the premium. The commissioner bases his figures for taxation upon the report of the insurance company, not upon any information he can acquire from the agents. The observation made in the dissenting opinion in the Washington case to the effect that the agent was required under that law to keep a complete record of all his transactions and that therefore the act might be considered regulatory for the purpose of facilitating investigations and the keeping in touch with the company's business does not apply to the Oregon law.

There is nothing in the law as enacted to indicate

to the court wherein the state or the public at large have any interest in the question as to whether or not the number of insurance agencies is limited and, as a matter of fact, this Court knows that it is a matter of no concern insofar as the public is concerned. The law is palpably class legislation passed at the instance of insurance agents in order to stifle competition.

This law may, we believe, be considered by the court as the pioneer of many laws passed in the interest of certain classes of citizens. We may assume that if this law is held to be constitutional, persons engaged in the various professions and lines of business which are subject to legislative regulation will be before the legislatures lobbying for the passage of laws to restrict competition in their particular lines and to grant them monopolies in their business. There can be no question but what plausible arguments can be made to the effect that if monopolies are granted and competition restricted, the public will, to some extent, benefit. The writer recalls seeing an article in one of the leading national magazines recently in which it was stated that if the business of merchandising in the necessities of life, clothing, groceries, etc., was in the hands of about 10 per cent of the present merchants, the cost to the public of these articles would be about one-third less and the manufacturer, jobber and retailer could all make the same profit which they now attempt to make. But this idea is utterly foreign to the American idea that this is a country of equal opportunities; that every man has a

right to engage in any lawful business free from any restrictions which are not imposed upon all others conducting the same business.

We respectfully submit that the law in question is unconstitutional and the judgment appealed from should be reversed.

Respectfully submitted,

GUY E. KELLY,
KARL HERBRING, *Pro Se*,
Attorneys for Appellants.

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APPENDIX

INSURANCE LAWS OF OREGON

6324. Insurance Department

(1) *Insurance Commissioner; State Fire Marshal; Real Estate Commissioner; Oath; Bond; Assistants; Seal; Certificate with Evidence; Annual Report*— There shall be in this state a department charged with the execution of the laws relating to insurance, to be called the "department of insurance of the State of Oregon." At the head of such department there shall be a state insurance commissioner. He shall be appointed by the governor within thirty days after this act shall take effect and shall hold his office for a term ending four years from the thirtieth day of June in the year of his appointment, at the end of which term and every four years thereafter the governor shall appoint a man experienced in insurance matters as insurance commissioner and, unless appointed to fill a vacancy, he shall hold his office for a term ending four years from the thirtieth day of June in the year of his appointment, and until his successor is appointed and qualified; and the governor may at any time remove such commissioner from office for inefficiency or malfeasance in office, or when in his judgment the good of the service requires it. A vacancy in such office shall be filled only for the balance of the unexpired term. The insurance commissioner shall receive in full compensation for his services an annual salary of $3,600, to be paid in the same manner as other state officers are paid. The commissioner, during his

term of office, shall not be interested in the business of any insurance company, except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the secretary of state, and shall give a bond to the State of Oregon in the penal sum of $25,000, with good sureties, approved by the governor, conditioned for the faithful performance of his duties, and premium on said bond shall be paid in the same manner as other expenses of the insurance department. He may appoint a deputy commissioner to assist him in his duties and an actuary; also such clerks and assistants as the public duties of his office may require. The first commissioner under this act shall adopt, with the approval of the governor, an official seal of such device as he may select, which thereafter shall be the official seal of the insurance department.

* * * * * *

6326. General Powers and Duties of Commissioner

(1) *Enforce Insurance Laws and Make Rulings*—The insurance commissioner shall have and exercise the power to enforce all the laws of the state relating to insurance, and it shall be his duty to enforce all the provisions of such laws for the public good. He shall issue such department rulings, instructions and orders as he may deem necessary to secure the enforcement of the provisions of this act, but nothing contained in this act shall be construed to prevent any company or persons affected by any order or action of the insurance commissioner from testing the validity of same in any court of competent jurisdiction.

(2) *To Issue Certificates and Licenses*—He shall issue all certificates and licenses under the seal of his office provided for by the terms of this act. Before granting certificates of authority to any insurance company to issue policies or make contracts of insurance in this state, the commissioner shall be satisfied by such examination as he may make, or such evidence as he may require, that such company is duly qualified under the laws of this state to transact business herein.

(3) *Insurance Companies to File Annual Financial Statement*—Every insurance company, doing business in the state, shall file with the commissioner, on or before March first of each year, a financial statement for the year ending December thirty-first immediately preceding on (a) form furnished by the commissioner, which shall conform as nearly as may be to the form of statement from time to time adopted by the National Convention of Insurance Commissioners, and containing such detailed exhibit of the condition and transactions of the company as the commissioner, in such form and otherwise, shall reasonably prescribe. Such statement shall be verified by the oaths of the president and secretary of the company, or in their absence by two other principal officers. The statement of a company of a foreign country shall embrace only its condition and transactions in the United States, and shall be verified by the oath of its resident manager or principal representative in the United States. In the discretion of the commissioner,

a penalty of ten dollars ($10) per day shall attach for delinquency in filing such statement.

(4) *Financial Statement To Be Published by Insurance Companies*—Immediately upon filing the annual statements with the insurance commissioner, every insurance company transacting fire, fire and marine, marine, life, life and accident, accident, health, liability, plate glass, steam boiler, burglary and theft, sprinkler leakage, flywheel, automobile property damage, workmen's collective, livestock, fidelity and surety, and credit insurance, and all other insurance companies, corporations, or associations doing business in the State of Oregon, shall publish once each year in two newspapers of general circulation and published in the state west of the Cascade range of mountains, and in two newspapers of general circulation and published in the state east of the Cascade range of mountains, a full synopsis of its general annual financial statement showing the condition of its business, and setting forth its resources and liabilities and the address of the principal office in Oregon, such synopsis to be first approved by the insurance commissioner.

(5) *Commissioner to Furnish Blank Forms for Annual Statement*—The commissioner shall annually, in November or December, furnish to each insurance company authorized to transact business in this state two or more blank forms to conform to the class or classes of insurance which they are authorized to write and commonly known as "convention form

blanks," and which blank forms have been approved by the National Convention of Insurance Commissioners, on which to make its annual statement.

(6) *Forms, from Whom Purchased*—For the purpose of carrying out the provisions of this section the commissioner is authorized to purchase blanks from any publishing house which makes a specialty of printing the "convention form of blanks" for the different states, and to pay for the same in the same manner as for other supplies required by the insurance department.

* * * * * *

6328. Foreign or Alien Insurance Companies

(1) *May Obtain License*—A foreign or alien insurance company may be authorized or licensed to do business in this state when it shall have complied with the following requirements:

(2) *Certified Copy of Charter, etc., To Be Filed*—It shall file with the insurance commissioner a certified copy of its charter, articles of incorporation or deed of settlement and a statement of its financial condition and business in the United States in such form and detail as he may require, signed and sworn to by at least two of its executive officers or the United States manager.

(3) *Amount of Capital Stock Required; Deposit of Securities by Foreign Life Insurance Company*—It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state

or government to do the business it proposes to transact; that it has a fully paid-up capital or a deposit capital in the United States over all liabilities therein, equal to two hundred thousand dollars ($200,000), with a surplus of not less than one hundred thousand dollars ($100,000), except as otherwise provided in this act; provided, however, that no requirement of capital or surplus herein shall apply to life insurance companies possessing assets amounting to one million dollars ($1,000,000) or more.

(4) *Deposit of Securities Required*—When required by the provisions of this act, it shall deposit with the insurance commissioner, in his official capacity, securities of the amount and character required of similar companies incorporated under the laws of this state, or in lieu thereof, unless such deposit is a special deposit required by this act to cover liabilities in this state only, shall furnish a certificate of deposit from the state official having custody of the securities showing to the satisfaction of said commissioner that it has securities to an amount not less than that required by this act deposited with the insurance commissioner, state treasurer or other proper official of some one of the states of the United States in which it is licensed to do business, and that the same are held for the benefit and security of the policyholders of such company in the United States, which certificate shall be renewed whenever required by the insurance commissioner.

(5) *Certificate of Authority to Do Business*—Upon compliance with the requirements of this section and all other requirements imposed on such company by existing laws and upon payment of the fees and charges imposed by law, the commissioner shall issue to it a certificate of authority to transact business in this state, which on thirty days' notice may be revoked if the insurance commissioner shall find that its condition in the United States is unsound or its surplus of admitted assets in the United States over all its policy liabilities, pertaining to the United States business, as defined in this act, has not been maintained and is less than that required herein.

(6) *Granting Certificate of Authority, Domestic Company*—A domestic insurance company shall be granted a certificate of authority to transact any kind or class of insurance permitted by the provisions of the insurance laws of this state and provided for in its articles of incorporation upon its compliance with all the laws of this state and the regulations of the insurance department relating to such companies and the payment of the fees and charges imposed by law, which certificate may be revoked on thirty days' notice by the insurance commissioner or he may suspend same temporarily if he deems necessary or advisable. Cause for revocation or suspension of such certificate shall exist if its capital is found to be impaired or the required surplus has not been maintained or if its transactions have been found to be in violation of the law.

(7) *Policy Forms and Rating Schedules Must Be Filed*—Every such insurance company or other insurer, excepting a marine insurance company, before it shall receive a license or a renewal of its license to transact the business of making insurance as an insurer in this state, shall file in the office of the insurance commissioner its rating schedules and policy forms to be used in the transaction of its business in this state. Every such company and its agents shall observe its rating schedules and shall not deviate therefrom when making insurance until amended or corrected rating schedules shall have been filed in the office of the insurance commissioner, and such company or its agents shall not discriminate between risks of essentially the same hazard in its application of its rates for insurance; provided, that nothing herein contained shall prevent any mutual insurance company or any interinsurance or reciprocal insurance exchange from making return of unabsorbed premiums to members at the end of the policy period. Acceptance of the schedule of a rating bureau as provided in subdivision 8 of section 6389, Oregon Laws, by a company which is a member of such bureau, shall be deemed a compliance with this act as to the filing of rating schedules. [L. 1917, c. 203, § 3-b, pp. 318, 319. Amended, L. 1921, c. 155, p. 304.]

* * * * * * *

6330. Taxes and Fees

(1) *Foreign and Alien Companies to File Statement of Gross Amount of Premium Received*—Every

foreign or alien company in its annual statement to the commissioner shall set forth the gross amount of premiums received by it from policies covering risks within the state during the preceding calendar year. It shall also set forth therein, in separate items, return premiums paid, payments made policyholders and considerations paid other companies for reinsurance in the state during such year, including premiums received for reinsurance of risks written by companies not licensed in this state during the preceding calendar year.

(2) *Amount of Tax on Alien and Foreign Companies*—If the commissioner finds such report as filed by an alien or foreign insurance company to be correct, he shall compute an amount of two and one-fourth (2¼) per cent on the balance of such gross amount of premium after deducting such return premiums, payments to policyholders for dividends and unabsorbed premiums and considerations paid for reinsurances in admitted companies, and charge the same to such company as a tax upon the business done by it in the state for the period shown by such annual statement. He shall forthwith mail to the last known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the commissioner on or before April 1 of each year.

(3) *Same; Where Company Ceases to Do Business*—If a company ceases to do business in the state, it shall thereupon make report to the commissioner of

its premiums collected or due as of the date ceasing to do business subject to taxation under the law, not theretofore reported, and forthwith pay to the commissioner the tax thereon, computed according to law.

(4) *Penalty for Refusal to Make Report*—If a company refuse to make any report for taxation or pay the tax imposed upon it as required by the law, it shall be liable to the state for the amount thereof and a penalty of not more than two hundred dollars ($200) per month for each month it has failed to report or to pay, after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the law relating to actions brought against insurance companies by policyholders thereof.

* * * * * * *

6333. Agents' Licenses; Resident Agent

No company, association, person or persons, authorized to transact insurance or offer indemnity contracts in this state, *other than life insurance companies*, and not incorporated under the laws of this state, hereinafter designated as company, *shall* make, *write*, place or cause to be made, written or placed, *any policy* or contract of insurance or indemnity of any kind or character, or a general or floating policy *covering risks on property located in the state of Oregon*, liability created by or accruing under the laws of such state, or undertakings to be performed in such state, *except through their regularly com-*

missioned and licensed resident agents, who shall countersign all policies or indemnity contracts so issued and collect the premiums therefor, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state, and no person shall pay or forward any premiums or applications for insurance or in any manner secure, help or aid in the placing of any insurance, or effect any contract of insurance or indemnity upon property, liability or undertakings located in this state with any such insurer which is not authorized to transact its business in this state; provided:

(1) *Section Does Not Apply*—This section shall not apply to the following contracts:

(a) *Policies Issued from Home Office of Domestic Company*—Policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state, and by mutual associations authorized to transact business in this state;

(b) *Policies Covering Property in Transit*—Policies covering property in transit while in the possession or custody of any common carrier, or the rolling stock or other property of any common carrier used and employed by it as a common carrier of freight and passengers;

(c) *Contracts of Reinsurance*—Contracts of rein-

surance or retrocessions made by or for admitted companies.

(2) *Annual Statement to Show Section Not Violated; Overhead Writing Affidavit*—At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto an affidavit of the president, manager, or chief executive officer in the United States that this section has not been violated.

(3) *Agent's Appointment To Be Filed With Commissioner; License Fee—Every company duly authorized* and licensed *to transact insurance business, other than life insurance companies, in the State of Oregon,* and lawfully doing such business therein, *may in respect thereof appoint an agent or agents in each city, town or village in this state, and the name of every agent appointed in accordance with the provisions of this section, including the classes of business he is authorized to transact for such company, shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner, if he finds the agent qualified, shall thereupon issue to each such agent a license setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending April first,* following the date of such appointment; provided, that the license issued to an established agency of any company in any city, town or village in this state may be transferred by the insurance commis-

sioner to another agent or agency upon proper application of any such company, without exacting further fees. Every such license for each agent representing any such company shall be renewed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such license shall be $2 and shall be paid to the insurance commissioner.

(4) *Application of Preceding Paragraph*—The provisions of the preceding paragraph shall apply to any person, firm or corporation who solicits insurance, receives or attempts to receive an application or order to write, renew or procure any policy, or collects, or attempts to collect, any premium for any company lawfully doing business in this state, and the name of each individual member comprising a firm, and the names of the president and secretary of a corporation so appointed, shall appear upon the license as herein provided for, and shall be supplied the insurance commissioner in the application therefor.

(5) *Contents of Application for License*—No license shall be issued to any applicant for an agent's license until such applicant shall have first made and filed in the commissioner's office an application therefor upon a form to be prescribed and furnished by the commissioner, which must show the applicant's name, business and residence address, name of com-

pany or companies to be represented, present occupation, occupation for last twelve months, portion of time to be devoted to the work, previous insurance experience, the name of employers during five years next preceding, and such other information as the commissioner may require. The statements and answers made in the application shall be warranted by the applicant and shall have the same force and effect as if such statements and answers had been made by the applicant as a sworn witness testifying to matters material to the issue in an action duly pending in a court of competent jurisdiction in this state. Such application must be approved by the company to be so represented and by the insurance commissioner. [L. 1919, c. 77, p. 85.]

(6) *Resident Agent*—As the State of Oregon receives a revenue from the fees and taxes paid by insurance and surety companies for the privilege of transacting an insurance business in this state under the requirements of the insurance law, and as the tax levied on premiums paid for insurance on property and undertakings located in the State of Oregon is a source of revenue to this state and shall be equitabily and impartially applied, then for that purpose and that the state may not be deprived of any such revenue from insurance premiums not reported through licensed agents of this state, the following provisions are made:

(a) *Only Licensed Agents May Write; Insurance*

Placed With Unauthorized Companies, Violation—It shall be unlawful for any person, firm or corporation, whether responsible as owner or agent of owner, to write, place, procure or cause to be written, placed or procured any policy, renewal of policy, or contract for insurance or indemnity or surety bond, upon property or undertakings situated or located or to be performed in the State of Oregon, except through and by a legally authorized and licensed resident agent in this state, and the writing or placing, or causing to be written or placed, of any such policy or contract of insurance or surety bond in any other manner or form, or the placing or procuring of insurance in unauthorized companies by the owner of such property, or his agent, except as provided in the insurance law of this state, is hereby declared to be a violation or evasion of the law providing for payment of taxes on such insurance premiums and a crime against the revenue of the state.

(b) *Commissioner Has Power to Examine Books; Penalty*—The commissioner, his deputy or authorized representative shall have the right at any time to call for and examine any and every policy of insurance or surety bond covering any risk in this state, and every property owner or his agent who may be in charge of the property or undertaking shall produce all such policies or bonds when requested for inspection . The commissioner or his deputy or authorized representative may call for and examine the books, accounts and records of any person, firm

or corporation which may be supposed to place or to hold policies covering on property or undertakings in this state and may require such persons or concerns or their authorized representatives in charge of such business to certify under oath to the facts shown by such records and accounts and to such statements of fact as they may make in answer to inquiries of the commissioner or his representatives. Any person who refuses or fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five dollars ($25) [and] not exceeding one hundred dollars ($100).

(c) *Commissioner to Bring Action for Violation; Penalties*—On receipt of evidence of violation of the provisions of this section by owner of such property or his agent, the insurance commissioner shall bring action against such person, persons or concerns, as are charged with such violations, in any court in this state having jurisdiction, to recover the taxes due the state on such unreported premiums, together with costs of such proceedings. Upon conviction of such violation such person or concerns shall pay, in addition to the judgment rendered, a fine of not less than one hundred dollars ($100).

(d) *Who Held as Legal Representative of Non-resident Violating Section*—If such person, persons or concerns against whom evidence of violation of the provisions of this section has been found are non-

resident and, if a corporation, have not filed with the corporation commissioner a power of attorney appointing some person duly qualified as attorney in fact for such nonresident to receive and accept service of all writs, processes and summonses requisite or necessary to give complete jurisdiction of any such person or concern to any of the courts of this state or of the United States therein, then the person acting as agent of such non-resident in this state or in charge of the property or undertakings of such nonresident in this state shall be held as the legal representative of such nonresident for the purpose of carrying out the enforcement of the provisions of this section and upon whom service in legal processes may be obtained. If such services in legal processes can not be secured upon the owner of such property or his agent, or if no person is found in charge of such property or undertakings of nonresidents in this state, then such service may be secured by publication in the manner provided in the Oregon law.

(e) *Policies Void, When*—All such policies or contracts of insurance which are held, procured or placed by the assured in violation of this section shall be deemed evidence of a violation of the law and shall be held to be void. No action to recover any claim under such policies or contracts shall be maintained in any court of this state.

(f) *Exceptions*—Provided, however, that nothing in this section contained shall apply to licensed reci-

procal or interinsurance exchanges which pay no commissions except to an office manager or attorney in fact, with principal office in another state from which contracts of indemnity are issued directly to the insured, nor to said office manager or attorney in fact, nor to the nonresident salaried representatives of such exchanges, nor to licensed mutual fire insurance companies authorized to transact business in this state which issue their insurance contracts directly from their home office and transact their business direct with the assured; and it shall not be unlawful for any person, firm or corporation of this state, whether as owner or representative of owner, to place any insurance with said exchanges or mutual fire insurance companies though any such office manager, attorney in fact or nonresident salaried representative, nor shall it be unlawful on the part of such office manager, attorney in fact or nonresident salaried representative to effect, receive or solicit such insurance when such reciprocal or interinsurance exchanges or mutual fire insurance companies which they represent are licensed for the transaction of business in this state and pay their taxes due the state. [L. 1923, c. 115, § 1, p. 172.]

6334. Agents

(1) *The Word "Agent" in This Act Includes, Contents of Certificate; Penalty for Failure to Procure Certificate*—The word "agent" in this act, wherever used, shall be construed to include and apply to a person, firm or corporation, and any certificate

issued by the insurance commissioner to any person, firm or corporation shall be issued only to a resident of this state and shall bear upon its face the name of each and every individual member comprising such firm and the names of the principal officers of such corporation; and any person who solicits insurance, receives an application or order to write, renew or procure any policy or collect any premium, or who attempts as middleman to place any insurance in this state shall be deemed an insurance agent, and shall comply with the provisions herein; and if such agent shall refuse or neglect to procure a certificate as provided herein before transacting business as such agent he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $50 for each offense and in default of payment of the fine shall be imprisoned in the county jail not more than fifteen days; provided, however, that the provisions of this paragraph shall not apply to the regularly employed office employes receiving a salary only from companies or agents or to agents of life insurance companies.

(2) *Record To Be Kept of Agents*—The commissioner shall record the names and addresses of all agents, so certified by him, in such manner that duly authorized agents and their respective companies may conveniently be inspected, and shall thereupon certify and deliver to the company a list of the names of all agents so recorded.

(3) *Revocation of Authority of Agent*—If the commissioner shall find that any insurance agent has wilfully violated or refused, or failed to comply with any provision of this act, he may revoke the authority of such agent and cancel his name on the commissioner's records, and notify the company or companies of such revocation. And thereafter such agent shall not act as an insurance agent or transact any insurance business for or on behalf of any company or of any person, until application for new certificate or certificates of his authority by the company or companies thereafter appointing him shall be duly filed with and approved by the commissioner and a license issued.

(4) *Person Not to Act as Agent for Company Not Licensed to Transact Business*—No person shall act as agent for any company in soliciting or placing insurance or aid in soliciting or placing insurance, unless the company shall have a license to transact such business, nor unless such agent has an unexpired, unrevoked certificate of his authority issued by the commissioner.

(5) *Insurance in Unauthorized Company; Agent Personally Liable; Penalty*—An insurance agent who fails to notify the insured that any of his insurance has been placed in an unauthorized company shall be personally liable on any contract of insurance made, issued or accepted through his agency in any company not licensed by the commissioner to make the insurance provided in such contract, and any

such agent who shall fail or neglect to notify the insured that said policy of insurance has been placed in an unauthorized company shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail, not to exceed thirty days, or by both such fine and imprisonment.

(6) *Revocation of Agent's License for Fraud*—The insurance commissioner, after notice, and for cause shown, may revoke the license of any agent, if it is evident that such agent conducts his business in a dishonest manner, or misrepresents the policies or contracts he sells; or misrepresents the policies or contracts of other agents or companies; or is conducting his business in such a manner as to cause injury to the public and those dealing with him. [L. 1917, c. 203, § 4-a, pp. 323-325.]

6335. Appeal from Decision of Insurance Commissioner

(1) *License of Agent, How Revoked; Appeals*—Whenever the commissioner shall determine to revoke any agent's license heretofore issued, or shall refuse to renew any agent's license on the proper application therefor, or shall refuse to issue any agent's license upon an original application therefor, he shall notify the holder of or applicant for such license of his intention and shall set a time, not less than fifteen days from the date of such notice, and shall designate the time and place where the holder of or applicant for such license may be heard in

his own behalf. The commissioner shall preside at such hearing and may subpena, compel the attendance, examine, and swear witnesses with like effect as if examined and sworn by a clerk of the circuit court. If the commissioner shall decide after such hearing that the license under question shall be revoked, or if he shall determine to withhold the renewal of any such license, or if he shall refuse to issue any license under an original application, he shall enter an order to that effect, setting forth his reasons in writing and shall file a copy thereof in his office and mail a copy to the party holding said license, or to the party applying for the issuance of a license, at the address given in the application. Such order shall not be operative for a period of ten days, and if the agent, or applicant for a license, shall feel aggrieved by the decision of the commissioner revoking or withholding the license, he may appeal to the circuit court of Marion county by giving notice of such appeal to the commissioner and filing a bond with the clerk of the circuit court of Marion county in the sum of $500, to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such applicant in the event of an adverse decision, said bond and notice to be filed within ten days from date of the commissioner's decision, and the filing of such notice and bond shall supersede the order of the commissioner until the final determination of such appeal. Upon the giving of such notice of appeal and the filing of said

bond, the commissioner shall certify the reasons given by him for the revocation or withholding of such license to said circuit court, whereupon the judge of said court shall proceed to a hearing and determine the law and the facts, and after such hearing may direct the continuance or issuance of a license, if satisfied that the provisions of this code have not been violated or are not in danger of being violated, or said court may, in its discretion, sustain the decision of the commissioner. Such appeals shall have precedence and shall be determined by said circuit court with the least possible delay. An appeal shall lie to the supreme court from the decision of the circuit court.

(2) *Power of Court to Impose Fine in Lieu of Revocation of License*—Upon the hearing of an appeal from the order of the commissioner revoking a license, and if a violation of the law is determined, the court may, in its discretion, if it believes an absolute revocation too severe a penalty for the offense of which the holder of the license is found guilty, impose a fine of not exceeding $100; the payment of the fine by the holder of the license, within ten days from the finding of the court, shall continue said license in full force and effect; otherwise the license shall be automatically cancelled. [L. 1917, c. 203, § 4-b, pp. 325, 326.]

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6340. No License Issued to Other Than a Corporation

Unless otherwise expressly authorized by this law

no license shall be issued other than to a corporation organized under the laws of this state or the laws of a state, territory, province or country, or to companies organized under the laws of foreign governments by deeds of settlement or articles of association. [L. 1917, c. 203, § 5-c, p. 328.]

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6346. False Statement in Application for Insurance a Felony

(1) *By Agent*—Any agent who makes a false or fraudulent statement or representation, on or relative to an application for insurance, or who makes any such statement for the purpose of obtaining a fee, commission, money or benefit in a company transacting such business under the provision of this act, shall be guilty of a felony, and the license of such offending agent shall be revoked.

(2) *Soliciting Insurance Without Complying With Law a Misdemeanor*—If any insurance company, corporation or association, its agents or attorney, shall solicit insurance in this state or shall issue a policy therein without having complied with the laws of this state, the company, corporation, or association, or its agent, or attorney, so issuing the policy or accepting the application for the same, shall be guilty of a misdemeanor and shall be subject to a fine of not exceeding $100. [L. 1917, c. 203, § 7, p. 331.]

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6359. Revocation of Certificate or License

(1) *By Commissioner, Under What Conditions*—If the commissioner shall find upon examination or

other evidence that any insurance company is in an unsound condition, or that it has failed to comply with the law or with the provisions of its charter or articles of incorporation or association, or that its condition is such as to render its proceedings hazardous to the public or to its policyholders, or that its actual assets exclusive of its capital are less than its liabilities, or if its trustees, directors, officers, or agents refuse to submit to examination or to produce at the office where the same are kept, its books, records, accounts, and papers in its or their possession or control relating to its business or affairs, for examination and inspection of the commissioner, his deputy or examiner, when required, or shall refuse to perform any legal obligation relative to such examination, the commissioner shall revoke or suspend all certificates of authority and licenses granted to such insurance company, its officers or agents, and shall cause notice thereof to be given to such company and to each agent of such company in this state and no new business shall thereafter be done by such company or for such company by its agents, in this state, while such revocation, suspension, or disability continues, nor until its authority to do business is restored by the commissioner.

(2) *Revocation Takes Effect; Review by Petition to Circuit Court of Marion County*—Unless the ground for revocation and suspension relates to the financial condition and soundness of the company,

or to the deficiencies in its assets, such suspension and revocation shall not become effective until the expiration of twenty days after it is made, and the commissioner shall take no action pursuant to such order of revocation or suspension, except he shall forthwith notify the company of the making of such order. At any time within such twenty days, such company may petition the circuit court of the State of Oregon for Marion county to review such order of suspension or revocation, and said court shall summarily hear and determine the question whether such violation has been committed, or whether the company is solvent, or in unsound condition, or has exceeded its powers, or has failed to comply with any provisions of the law, or of its charter, or articles of incorporation or association, and whether its condition is such as to render its further proceedings hazardous to the public and to its policy holders, and the court upon such hearing and determination shall make and enter such decree as may be proper in the premises.

(3) *Order of Revocation Suspended Until Determination by Court*—If the company files such petition in the circuit court of the State of Oregon, for Marion county, within said twenty days, then the operation of the order of suspension or revocation shall be further suspended until the determination of the cause by said circuit court, but if such petition be not so filed within said twenty days, then such order of the commissioner shall become effective immediate-

ly upon the expiration of said twenty days, and the commissioner shall forthwith take these steps pursuant to such order of suspension or revocation hereinbefore provided for.

(4) *Appeal to Supreme Court*—Such order or decree of said circuit court shall be appealable to the supreme court of the State of Oregon in the same manner as other judgments and decrees. [L. 1917, c. 203, § 16-b, pp. 335, 336.]

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6361. Combinations and Agreements Prohibited; Overhead Writing Affidavit

It shall be unlawful for any insurance company authorized to transact business in this state, or any manager or any agent or representative thereof, to, either within or outside of this state, directly or indirectly, enter into any contract, understanding or combination, with any other insurance company, or any manager, or any agent or representative thereof, or to jointly or severally do any act or engage in any practice or practices for the purpose of controlling the rate to be charged, or commissions or other compensations to be paid, for insuring any risk or class or classes of risks, in this state, or for the purpose of discriminating against or differentiating from any company, manager or agent, by reason of its or his plan or method of transacting business or its or his affiliation or non-affiliation with any board or association of insurance companies, managers, agents or representatives, or for any purpose detrimental to

free competition in the business or injurious to the insuring public. Whenever the commissioner shall have knowledge of any violation of this section, he shall forthwith order such offending company, manager, agent or representative to immediately discontinue such practice or show cause to the satisfaction of the commissioner why such order should not be complied with. Within thirty days from the receipt of such order, and upon a failure to comply with such order, the commissioner shall forthwith revoke the license of such offending company or agent, and no renewal of the license so revoked shall be granted within three years from the date of the revocation. [L. 1917, c. 203, § 18, pp. 337, 338.]

6362. Rebates

(1) *Rebating Prohibited; Penalty*—Every insurance policy issued in this state shall bear on its face a true statement of the premium paid or to be paid and no insurance company or officer thereof, and no insurance agent, shall personally or otherwise offer, promise, allow, give, set off or pay directly or indirectly, any rebate of, or part of, the premium payable on the policy, or on any policy, or agent's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue thereon or therefrom, or any other valuable consideration or inducement to or for insurance, on any risk in this state now or hereafter to be written, which is not specified in the policy of insurance; nor shall any company or agent, personally or otherwise, offer,

promise, give, sell or purchase any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever, as inducement to insurance or in connection therewith which is not specified in the policy. Upon satisfactory evidence of the violation of the provisions of this section by any insurance company or agent, the insurance commissioner shall forthwith revoke the certificate of authority of such company or the license of such agent, and no certificate of authority or license shall be issued to such company or agent within one year from the date of such revocation of license. And any insurance company, its officers or agents, violating the provisions of this section of this act, shall be guilty of a misdemeanor, and upon conviction thereof the offenders shall be sentenced to pay a fine not exceeding $100 for each and every violation.

(2) *Insured Person Not to Receive Rebate; Penalty*—No insured person or party shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any of the agent's commission thereon, payable on the policy or any policy of insurance, or any favor or advantage or share in the dividend or other benefit to accrue thereon, or any valuable consideration or inducement not specified in the policy of insurance. The amount of the insurance whereon any one insured has received or accepted, either directly or indirectly, any such rebate, favor, advantage, benefit or consideration, shall

be reduced in such proportion as the value of such rebate, favor, advantage or benefit or other consideration so received by the insured bears to the total premium on such policy, and any such offending person or party insured, in addition to having the insurance reduced shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not more than $100 for each and every violation.

(3) *Employe of Person or Corporation Not to Receive Rebate; Penalty*—No employe of any person, firm or corporation, and no officer or director of any corporation, shall receive, directly or indirectly, any rebate of premium or part thereof payable on a policy of insurance issued to the person, firm or corporation by which he is employed, or of which he is an officer or director, or shall receive any part of any agent's commission payable on a policy issued to such person, firm or corporation. Any such employe, officer or director who shall receive any such rebate or agent's commission, or part thereof, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not exceeding $100 for each and every such offense, and if he be a licensed insurance agent his license shall be revoked.

(4) *Act Does Not Apply to Agent Writing Own Insurance*—Nothing in this act shall be considered as prohibiting a duly licensed insurance agent from

writing insurance upon his own property, or the property of his employer, firm or corporation and receiving for his own use the regular agent's commission thereon; provided, said agent shall first have written and issued in good faith insurance upon other property the premiums upon which shall be at least equal in amount to the aggregate of the premiums upon insurance written by him on his own property and on the property of his employer, firm or corporation.

(5) *Person Giving Incriminating Testimony Not To Be Prosecuted*—No person shall be excused from testifying or from producing any books, papers, contracts, agreements or documents at the trial of any other person charged with violation of any provision of this section, on the ground that such testimony or evidence would tend to incriminate the person so testifying, but no person shall be prosecuted for any act concerning which he shall be compelled so to testify, or produce evidence, documentary or otherwise, except for perjury in so testifying. The provisions of this section do not apply to the business of life insurance, which is regulated by a separate section relating to rebating and discrimination. [L. 1917, c. 203, § 19, pp. 338-340.]

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DOMESTIC INSURANCE COMPANIES

6364. Domestic Insurance Companies

Every domestic insurance company, association or organization, unless otherwise exempt by specific sections of this act, shall comply with the following requirements: [L. 1917, c. 203, § 21, p. 340.]

6365. Organization of Domestic Companies

(1) *Articles of Incorporation Shall Specify*—Any ten or more persons, a majority of whom are residents of this state, desiring to become incorporated and so organize an insurance company, may make, sign and acknowledge, before an officer authorized to take acknowledgments of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name, which shall not so nearly resemble the name of an existing corporation as to mislead the public or cause confusion;

(b) The place where its principal office shall be located;

(c) The purpose, which shall be restricted to the class or classes of insurance to be undertaken, and the powers necessary and incidental to carrying out such purpose;

(d) The mode and manner in which the corporate powers are to be exercised, the number, terms of office and manner of electing the directors, who shall be stockholders, members or policyholders of the corpor-

ation, and a majority of whom shall be residents of this state;

(e) The provisions for meeting and votes of stockholders and members. A stock company shall provide that each stockholder shall have one vote for each share of stock held by him. A company without capital stock shall provide that every policyholder shall be a member and entitled to a vote, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder;

(f) The amount of its capital, if any, the number of shares and the par value of each share;

(g) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company.

(2) *Articles To Be Filed With Commissioner; Notice of Filing To Be Published; Bond*—The incorporators shall file such articles with the commissioner and shall publish, in a newspaper of general circulation in the state, notice of such filing of such articles and of the intention to form such company and file with the commissioner a copy of such notice, verified by the oath of the publisher, or his agent, and copies of proposed bylaws and forms of subscriptions for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature and advertise-

ments. They shall also file with the commissioner a bond payable to the commissioner and his successors, as trustee, in the sum of ten thousand dollars, with sureties, and conditioned upon the faithful accounting to the company on completion of its organization and the receipt of its license from the commissioner, or to the stockholders, members, applicants for policies and creditors, or the trustee, receiver or assignee of the company, duly appointed in any proceeding in any court or department of competent jurisdiction in the state, in accordance with their respective rights in case the organization of the company is not completed and license is not procured from the commissioner.

(3) *Articles To be Approved by Corporation Commissioner; Certificate*—The commissioner shall submit the proposed articles and other papers so filed with him to the corporation commissioner, who shall examine the same and if he find the same in accordance with the law, he shall so certify and return the same to the commissioner, who shall cause the articles and the certificate of the corporation commissioner to be recorded in his records and issue to the incorporators a certified copy thereof. If the commissioner shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall deliver to the incorporators a permit to and in the name of the corporation, authorizing it to complete its organization. The corporation shall have authority under such permit to solicit subscriptions and

payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in this law prescribed, as may be necessary and proper in completing its organization and qualifying itself for a license from the commissioner to transact the class or classes of insurance proposed in its articles of incorporation. But such company shall not issue policies or enter into contracts of insurance until it shall have received the license of the commissioner authorizing it so to do.

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(7) *Commissioner to Examine Into Condition*—The commissioner may, personally or through his deputy and assistants, examine into the affairs of any such company and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with such company, and he may publish any facts which he may deem of interest to those dealing with such company; and if he find the company is violating the law, or if the company shall not be qualified for license within one year from date of its permit, he may revoke its permit; and if he find an agent of such company has violated the law, he may revoke his authority, and he may, for such agent's violation, revoke the company's permit. The commissioner may renew any company's permit or agent's authority which he has revoked.

(8) *License to Transact Business*—Upon the ap-

plication of any such domestic insurance company for a license, the commissioner shall examine into its affairs and determine its assets and liabilities, and if he find the company has, in money and other lawful investments, the assets, capital and surplus required by law, and that it has complied with all the requirements of the law, he shall issue to it a license authorizing it to transact its appropriate business of insurance. [L. 1927, c. 105, pp. 98-101.]

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6386. Overinsurance; Unlawful

(1) *By Company or Agent*—It shall be unlawful for any insurance company or any agent knowingly to issue any fire insurance policy upon property within this state for an amount which with any existing insurance exceeds the fair value of the property or of the interest of the insured therein, or for a longer period than for five years.

(2) *Penalty for Making Over-insurance*—Every insurer who makes insurance upon any building or property, or interest therein, against loss or damage by fire, and every agent who issues a fire insurance policy covering any building or property or interest therein and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected. Any insurer who knowingly makes, or any insured who knowingly procures insurance on any building

or property or interest therein against loss or damage by fire in excess of the insurable value thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding $100. Any agent who knowingly effects insurance on a building or property or interest therein in excess of the insurable value thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding $100. Provided, that this section shall not apply to insurance on stocks of merchandise or property of fluctuating values, where the reduced rate percentage value clause is made a part of the policy.

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6388. Fire Insurance

(1) *Foreign Fire Insurance Companies Not to Write Insurance Except Through Licensed Agent*— It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid; provided, that this section shall not apply to direct insurance covering the rolling stock and other property belonging to and used in the operation and maintenance of plant and business of railroad corporations or other common carriers or prop-

erty in transit while in the possession and custody of railroad corporations or other common carriers and mutual fire insurance companies. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president, manager, or chief executive officer in the United States that this section has not been violated. This section shall not apply to policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state.

(2) *"Title" Under Which Fire Insurance Is To Be Written Must Be Registered*—Every fire insurance company shall, before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, file with the insurance commissioner of this state the "title" under which it proposes to write any such insurance in the state of Oregon, and such title shall be registered by said insurance commissioner, together with the name of the insurance company filing such title, and a sample and specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner; and upon paying the fee as hereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

(3) *Filing Fee; Certificate*—Every insurance company registering a title under this act shall pay to the insurance commissioner a fee of $5 and the insurance commissioner shall then issue a certificate to the insurance company registering such title, setting forth the name of the company, and attaching to the certificate a facsimile of the title registered and filed as hereinbefore provided.

(4) *License of Fire Insurance Agent; Certificate; License Fee*—Every insurance company licensed to transact a fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state to represent the title registered, and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the provisions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent that [who] is qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March thirty-first following the date of such appointment. Every such agent now representing any such company, or who may hereafter be appointed to represent any such company, provided such agent is qualified as provided in this act, shall be relicensed during the

month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such certificate shall be $2 and shall be paid to the insurance commissioner; provided, that the certificate issued to an established agency of any company in any city, town or village in the state may be transferred to any agent or agency by the insurance commissioner upon proper application of any such company without exacting further fees.

(5) *Additional Title*—(a) Any insurance company authorized to transact a fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of corporate title by such companies in this act and may issue its policies under such additional title.

(b) Fees. Any such company qualifying to transact business under an additional title shall be subject to the payment of the same fees for the transaction of business under such additional title as are required of such company in the transaction of business under its corporate name, and may appoint agents to transact its business under such additional title in the same manner as provided for companies.

(c) Report. Any company transacting business under an additional title shall report to the insurance commissioner the amount of such business transacted under the additional title, for taxation and depart-

mental purposes, in the same manner and form as such company is required to report the business transacted under its corporate name.

(6) *Appointment of Additional Agent*—Any such insurance company which is authorized to transact fire insurance in this state in its corporate title and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

(7) *Additional Agent in Certain Cities*—Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.

(8) *Annual License Fee for Additional Agent*—Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of $500 for each such agent.

(9) *Commissioner to Approve Character of Agent*

—On receipt of an application and before issuing such license to an agent as provided for in section 4 of this act, the insurance commissioner shall satisfy himself that such person or agency is qualified for such business as he proposes to transact and shall be advised as to the moral character and integrity of the proposed agent or applicant for such license.

(10) *License Withheld in Certain Cases*—It shall be the duty of the commissioner to withhold any license applied for, or revoke any license issued to any agent or agency, when he is satisfied that the principal use of such license is to effect insurance upon the property or liability of such agent or agency or to evade the enforcement of the anti rebate law or that such applicant has not complied with or is not complying with all legal requirements relating to agents.

(11) *Agents May Use Office Space With Agent of Other Companies*—No fire insurance company, its officers or district managers, shall prohibit any agent or representative of such company or manager from occupying or renting or using office space with any person or persons representing insurance company or companies. If any such company, its manager or representative, shall issue instructions contrary to this provision, the insurance commissioner shall, on receipt of proof of such act, cause the license of the offending company to be suspended for a period of thirty days. [L. 1917, c. 203, §22-c, pp. 354-356.]

6389. Rating Bureau

(1) *Organization and Regulation of*—Any person, persons, copartnership, company, companies or insurer legally authorized to transact the business of insurance and a resident within this state, or any person who is a resident of this state and not an officer or employe of any insurance company may organize or maintain a rating bureau, for the purpose of inspecting and surveying the various municipalities and fire hazards in this state, and the means and facilities for preventing, confining and extinguishing fires, for the purpose of estimating and promulgating fair and equitable rates for insurance, and to furnish to municipalities, owners of property, insurance companies or agents, information as to rates and advice as to measures to be adopted for the reduction of fire hazards on property within this state, and lessening the cost of insurance thereon. Every such rating bureau shall establish and maintain an office in this state. The business of conducting a rating bureau in this state is public service in character and shall be conducted without profit to any party, except that fair and reasonable compensation shall be paid for all services actually rendered, and necessary to the business. Every rating bureau shall, before publishing or furnishing any rates, file in the office of the insurance commissioner its rating schedules, and shall not deviate therefrom until amended or corrected rating schedules shall have been filed in the office of the insurance commissioner. The services of such rating bureaus shall be available, equally and ratably in

proportion to the service rendered, to any and all insurance companies, agents and property owners. The office of rating bureaus shall be open during the regular office hours for the information of the citizens of this state.

(2) *Records To Be Kept*—Each rating bureau now or hereafter organized and maintained in this state shall keep an accurate and complete record of all work performed by it, in surveying, estimating and promulgating rates and furnishing information in respect thereto, which record must show all receipts and disbursements, and be open during the regular office hours to the inspection and examination of the commissioner, his deputy or examiner, who may at any time review such rate or rates to determine whether the schedule has been properly applied.

(3) *Duty of Rating Bureau to Furnish Information to Commissioner*—The insurance commissioner may address inquiries to any individual, association or bureau, which is or has been engaged in making rates or estimates for rates for fire insurance upon property in this state, in relation to his or its organization, maintenance or operation, or any other matter connected with his or its transactions and it shall be the duty of every such individual, association or bureau, or some officer thereof, to reply promptly and fully to such inquiries in writing.

(4) *Commissioner to Examine; Commissioner's Annual Report*—The insurance commissioner shall

have the power to examine any such rating bureau as often as he deems it expedient to do so, and shall do so not less than once every three years. A report thereof shall be filed in his office and a statement with regard to each such examination shall be made in the annual report of the insurance commissioner.

(5) *Unfair Discrimination Prohibited*—No fire insurance company or other insurer against the risk of fire or lightning, nor any rating bureau shall fix or charge any rate for insurance in this state which discriminates unfairly between risks of essentially the same physical, climatic or other hazards, or which discriminates unfairly in the application of like charges and credits between risks of essentially the same physical, climatic or other hazards, and having substantially the same degree of protection against fire. Whenever it is made to appear to the satisfaction of the insurance commissioner that such discrimination exists, he may, after full hearing either before himself or before any salaried employe of the insurance department whose report he may adopt, order such discrimination removed; and the insurance companies and/or rating bureau or bureaus affected thereby shall comply with such order within thirty days after service of such order upon them, unless an appeal be taken as hereinafter provided; such insurance companies and/or rating bureau or bureaus shall not remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satis-

faction of the insurance commissioner that such increase is justifiably based upon conditions existing at the time of the hearing. The insurance companies and/or rating bureau or bureaus charged with discrimination or involved therein shall be given at least five days' written notice of the hearing, which shall set forth with reasonable certainty the discrimination charged. If the insurance commissioner finds that the discrimination exists, and orders its removal, he shall find and state in his order whether an increase in any rate involved is justified. Any insurance company and/or rating bureau or bureaus affected by such order may appeal therefrom to the circuit court of the State of Oregon for Marion county within thirty days after service of the order, by serving upon the insurance commissioner and filing with the clerk of said court, a notice of appeal, together with a copy of the order appealed from, a copy of the notice of hearing and an undertaking in the sum of $500, with one or more sureties qualified as bail on arrest, conditioned to pay all costs that may be awarded against the appellant upon the appeal. Such appeal shall suspend the order of the insurance commissioner until the final decision upon appeal. The appeal shall be heard and tried in the manner provided by law for the trial of suits in equity. The notice of hearing shall be deemed a complaint, and shall be deemed denied, and no other pleading shall be required. If the court sustains the charge of discrimination, it shall determine also by its order or

decree whether such discrimination may be removed by increasing any rate involved. Such appeals shall have precedence over other civil causes, and shall be heard and determined promptly. Either the insurance commissioner or any insurance company or rating bureau affected by the order or decree of the circuit court may appeal therefrom to the supreme court of the State of Oregon, in the same manner that appeals may be taken from decrees in suits in equity.

(6) *Rating Bureau to Furnish "Chief Examiner"; Duties*—Every rating bureau operating under the provisions of this act shall appoint a person with the title of "chief examiner," who shall be experienced in insurance matters, but such person shall not in any way be engaged in making rates for the bureau, and shall be held responsible for the examination of all applications and daily reports submitted to such bureau and shall report to the insurance commissioner any and all cases in which companies or agents discriminate on risks of essentially the same hazard or deviate from the schedules on file in the insurance department, and any and all violations of this act, but he shall not make or keep any copy or copies of such applications or daily reports or record thereof except to indorse his approval thereon if correct or attach such memoranda or entries as may be necessary to show what, if any, errors; keeping copies thereof, for the purpose of checking such errors and releasing memoranda thereof when corrected. Upon the failure of such person to report promptly any vio-

lation of this law he shall be liable to a penalty of $10 for each violation.

(7) *Application for Fire Insurance To Be Submitted to Chief Examiner*—All applications for insurance and daily reports of policies issued by every fire insurance company holding membership in a rating bureau on risks in this state shall be submitted to the chief examiner of such rating bureau, for the purpose of examination to ascertain if there are any errors in the forms of policy or rate of premium charges therefor, who shall indorse his approval on such application or daily report if correct; withholding his approval if incorrect as to the form used or rate charged, such as to constitute a discrimination in rate, advising the company and the agent submitting the same, showing wherein the error exists and if correction thereof is not made within a reasonable time, he shall report the same with the name of the company and the agent to the state insurance commissioner.

(8) *Schedule of Rates To Be Filed With Commissioner*—Every fire insurance company or other insurer authorized to effect insurance against the risk of damage by fire or lightning in this state shall, before being permitted to write such insurance in this state, file with the insurance commissioner a schedule of rates, unless such company or other insurer has given notice to the insurance commissioner of its acceptance of the schedule of rates filed by a

rating bureau of which such company or other insurer is a member, and any company or other insurer filing such schedule of rates, or giving notice to the insurance commissioner of the acceptance of the schedule filed by the rating bureau, shall not deviate therefrom until corrected or amended schedules shall have been filed in the office of the insurance commissioner, and every company or other insurer not belonging to a rating bureau and having filed its individual schedule as herein required shall keep a complete record of all applications and daily reports received by it, showing the same to have been written in conformity with its rating schedules filed with the insurance commissioner, and promptly notify its agents or other representative of any errors in the applications or daily reports written or submitted by them and shall report to the insurance commissioner any failure upon the part of such agents or other representatives to make such corrections in the same manner and with the same penalties for violation as is required of the chief examiner of a rating bureau, which record of its business shall at all times be open to inspection by the insurance commissioner, his deputy or examiner. No such insurer shall be a member of more than one rating bureau for the purpose of rating the same class or classes of risks, nor file, publish or use the rates or rating schedules of any rating bureau organized or maintained under the provisions of this act, unless such insurer is a member thereof. Every insurer that has given notice to the

insurance commissioner of its acceptance of the schedule of rates filed by a rating bureau of which it is a member shall, thirty days in advance of any variation by it from the bureau rate, file with the insurance commissioner and bureau the variation from the bureau rate, which shall be uniform throughout the territorial classification, and every such insurer shall be permitted to make uniform variations from the bureau rate.

(9) *Restrictions as to Duration of Insurance*—Except as contained in the policy and the usual agreement for other insurance, no such insurance company or insurer or rating bureau shall make any contract or agreement with any person insured or to be insured with regard to the time any rate shall remain in effect, or that the whole or any part of any insurance shall be written or placed with any particular company, insurer, agent or any group of companies, insurers or agents.

(10) *Admission to Membership in Rating Bureau*—A rating bureau shall admit to membership any authorized insurer applying therefor. The expenses of the bureau shall be shared by each member in proportion to the gross premiums received by it during the previous year on business rated by such bureau, deducting premiums and dividends returned to policyholders, to which may be added a reasonable annual fee.

(11) *Inspection of Risk*—Every rating bureau or

insurer engaged in making rates or estimates for rates for fire insurance on property in this state shall inspect every risk specifically rated by it, making a written survey of such risk, which shall be filed as a permanent record in the office of such rating bureau or insurer, and a copy of such survey shall be furnished to the owner of the property surveyed upon request. Such insurance companies and/or rating bureau or bureaus shall also provide such means as may be approved by the insurance commissioner whereby any person or persons affected by such rate or rates may be heard before the proper executive of such companies and/or rating bureau or bureaus on an application for a change in such rate or rates.

(12) *Short Rate Table for Cancellation of Policy To Be Filed With Commissioner*—Every insurance company doing business in this state shall file in the office of the insurance commissioner its short rate table for cancellation of policies and shall not deviate therefrom until an amendment shall have been filed with the insurance commissioner, nor shall any insurance company file a schedule of rates of any rating bureau less a certain percentage of the rates estimated and promulgated by said bureau when making insurance.

(13) *Penalty Clause*—Every corporation, association, bureau or person failing to comply with the requirements of this act, or knowingly and wilfully violating any of its provisions, shall be deemed guilty

of a misdemeanor and upon conviction be fined not to exceed $100 for each offense, and any license or certificate of authority granted by the insurance commissioner to the offender may be suspended or revoked. [L. 1919, c. 113, p. 163.]

* * * * * *

6457. Uniform Contract or Policy of Fire Insurance

That from and after the first day of September, 1911, no fire insurance company, corporation or association, their officers or agents, shall make, issue, use, or deliver for use, any fire insurance policy, or renewal of any fire policy on property in this state, other than as shall conform to the following conditions, which conditions shall be contained upon page two of such policy of insurance and which shall form a portion of the contract between such insurer and insured, and which shall read as follows:

CONDITIONS REFERRED TO IN BODY OF CONTRACT

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the in-

sured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part

by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding

twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

Fallen Building Clause—If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to ac-

counts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plateglass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may, by a renewal, be continued under the original stipulations, in consideration of premium for the renewed term; provided, that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy

shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy in canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that

the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the

claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examination under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

PROVISIONS FOR OTHER CONDITIONS

Provided, however, that any fire insurance company, corporation, or association, its officers or agents, may add to such conditions other conditions, provisions, and agreements not in conflict with law, or contrary to public policy; but such conditions must be placed on the first page of the policy and if the conditions restrict, or abridge the rights of the assured under the policy contract, each restrictive clause must be preceded by a sufficiently explanatory title printed or written in type not smaller than eight-point capi-

tal letters, except that mutual companies may print their constitution and bylaws immediately following the provisions of this act. [L. 1911, c. 175, §1, p. 279.]

* * * * * *

6393. Policy Standard Form; What to Contain

1. On and after January 1, 1918, no fire insurance company shall issue any fire insurance policy covering on property or interest therein in this state other than on form known as the "standard" as now or may be hereafter constituted.

2. A company may print on or in its policy its name, location, and date of incorporation, the names of its officers and agents, the number and date of the policy, and if it be a stock company the amount of its paid-up capital stock. Every policy shall have legibly inscribed upon its face and filing back suitable words to designate whether the company making such insurance be a stock, or mutual company, or "Lloyds," or interinsurers association.

3. A company may print or use in its policies printed forms of description and specifications of the property insured.

4. A company insuring against damage by lightning may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance the words, "whether by fire, lightning, or both."

5. A company may write upon the margin or across the face of the policy, or write or print in type not smaller than nonpareil upon a slip, slips, rider or riders to be attached thereto, provisions adding to or relating to those contained in the standard form; and all such slips, riders, indorsements, and provisions must be signed by the officers or agents of the company so using them.

6. The word "noon," occurring in the policy, shall be construed to be the noon of standard time of the place where the property covered by the policy is situated.

7. In every case of loss, the insured shall notify the local or general agent or head office of the company of the fact of loss, and the company shall within a reasonable time furnish to the insured printed blanks required for making the proof of loss required by standard form of policy, and the furnishing of such blanks shall not be deemed in itself an admission of liability on the part of the company. The insured shall have ninety days after receipt of such blanks to furnish proof of loss, notwithstanding anything contained in the standard form of policy. [L. 1917, c. 203, § 22-h, pp. 361, 362.]

* * * * * *

6397. Rate War; Offending Company; Agent's Commission

Any company which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling

competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the assured any return premium, on any risk so to be rewritten, on which their agent has received or is entitled to receive his regular commission, such company shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [L. 1917, c. 203, § 22-l, p. 362.]

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1928

No. ~~5~~ 17

KARL HERBRING,
Appellant,

vs.

CLARE A. LEE,
Appellee.

Statement Supporting Jurisdiction

GUY E. KELLY,
Attorney for Appellant.
Suite 420 Puget Sound Bank Bldg.,
Tacoma, Washington.

The Bell Press, Printers; 719 Commerce St., Tacoma, Wash.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1928

No. 590

KARL HERBRING,

Appellant,

vs.

CLARE A. LEE,

Appellee.

Statement Supporting Jurisdiction

This case presents only one question, viz.:

Are the constitutional rights guaranteed to the appellant under the provisions of Section 1 of the 14th Amendment to the Constitution of the United States

violated by paragraph 8 of Section 6388, Oregon Laws?

The Supreme Court of the State of Oregon decided that appellant's constitutional rights were not violated by the Oregon Law, on June 17, 1928 (Record, p. 20), and ordered this proceeding dismissed.

Appellant thereupon filed his application for a rehearing on August 4, 1928 (Record, p. 33), and thereafter, on October 2, 1928 (Record, p. 37), this petition was denied, without opinion.

On October 14, 1928 (Record, p. 38), appellant presented his petition for appeal, which was granted on the same day.

Title 28, Sec. 344, paragraph (a) U. S. C. A., provides that "where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The judgment is final; the Supreme Court of Oregon, the highest court of that State.

That this question was the only question presented to the Supreme Court of Oregon is shown by the opinion (Record, p. 20), wherein it is stated:

> "The attack is made by respondent upon the validity of subdivision 8, Sec. 6388, Oregon Laws,

as in violation of Sec. 20, Article I, of the Constitution of Oregon. . . . .It is also claimed that the provision is repugnant to the 14th Amendment of the Constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws."

This Court has jurisdiction of this appeal. *Home Insurance Company vs. Augusta, Georgia*, 93 U. S. 116; 23 L. Ed. 825.

The initiation of this proceeding is statutory. Under the Oregon "Insurance Code" (Sections 6322, *et seq.*, Oregon Laws,) anyone desiring to write insurance as an agent must first obtain an agent's license; he makes application therefor upon a form supplied by the Insurance Commissioner, in which he is required to give in particular detail his business and personal history; he forwards this to the commissioner with the statutory fee for the license, $2.00; if the commissioner denies the application, he files in his own office an order, giving the applicant a copy thereof, and if the applicant desires to appeal to the courts therefrom, he does so by serving and filing a notice of appeal and bond, to which the commissioner responds by certifying to the Court his reasons therefor and the Court thereupon hears and determines the matter. (Section 6335).

The law provides that the first agent making application to write insurance in any particular com-

pany in cities having a population of less than 50,000, and the first two agents applying in larger cities may obtain their agent's license upon the payment of an annual license fee of $2.00 but that all others must pay an annual license fee of $500.00 (Section 6388).

From its inception this matter was intended to test the constitutionality of this law.

Appellant made his application upon the form furnished by Appellee. This contains the information required by the law to be furnished by the "applicant" (Section 6333,) and begins: "I hereby make application" although the paper is entitled "Agents qualification report" and the appellee required the Insurance Company to sign and file with him another paper not provided for by the law and which is entitled "Application".

The appellee then refused to grant the application unless the $500.00 fee was paid, there being two other persons in Portland already licensed to write insurance in this company. The appellant then appealed in the statutory manner to the Courts.

The Circuit Court of Marion County held the law to be unconstitutional, which decision was reversed by the Supreme Court of Oregon.

The appellee takes the position that the law in question is a *condition precedent* to the right of a *foreign insurance company* to do business in Oregon and that

therefore the Constitution has no application. In this position he was sustained by the Supreme Court of Oregon.

The appellant's position is that the obtaining of an *agent's* license, while a condition precedent to the right of the *agent* to do business has no bearing whatever upon the rights or privileges of the corporation, since the law requires the corporation to obtain a license of its own, separate and distinct from the agent's license, and based upon the financial responsibility of the company: that the law in question is an unreasonable and unwarrantable interference with the right of the individual to carry on a legitimate business, and class legislation in that it is an attempt to monopolize the insurance agency business.

GUY E. KELLY,

Attorney for Appellant.

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Supreme Court of the United States

October Term, 1929

No. 590 17

KARL HERBRING
Appellant,

vs.

CLARE A. LEE,
As Insurance Commissioner of the State of Oregon,
Appellee.

APPELLEE'S BRIEF

I. H. VAN WINKLE,
Attorney General of the
State of Oregon,

WILLIS S. MOORE,
Assistant Attorney General of the
State of Oregon,

Attorneys for Appellee.

GUY E. KELLY,
Attorney for Appellant.

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Supreme Court of the United States

October Term, 1929

No. 590

KARL HERBRING
Appellant,

vs.

CLARE A. LEE,
As Insurance Commissioner of the State of Oregon,
Appellee.

APPELLEE'S BRIEF

Reference to Official Report of Opinion Below

The report of this case in the lower court will be found in 126 Or., beginning at page 588, 269 Pac. 236. The date of the judgment to be reviewed is July 17, 1928 (R. 19).

Jurisdiction of This Court

A statement of the appellant particularly disclosing the basis on which it is contended this court has jurisdiction to review on appeal the judgment or decree below and a statement of appellee against the jurisdiction asserted by appellant have been filed herein.

STATEMENT

In the lower court this case was submitted upon a stipulation of facts (R. 3) from which it appears that the appellant, a practicing attorney in the city of Portland, Oregon, applied to the defendant Insurance Commissioner of the State of Oregon for a license to represent the Northwestern National Insurance Company of Milwaukee, Wisconsin (R. 4), as its agent in the city of Portland, Oregon; that at the date of said application said company had two agents then licensed to represent it in said city; that said application of appellant was denied for the reason that the law required such applications to be made by the company which such agent was to represent (R. 7), and for the reason that, although the said Northwestern National Insurance Company made application for the appointment of appellant as its agent, it refused to pay the fee of $500 required by subdivision 8 of section 6388, Oregon Laws, to be paid by such a company as a condition precedent to its right to appoint a third agent to represent it in a city in the state of Oregon having more than 50,000 inhabitants according to the last federal census. (R. 9 and 13).

The case is brought to this court upon an assignment that the Supreme Court of Oregon erred in holding that subdivision 8 of section 6388, Oregon Laws, does not abridge the rights of the appellant guaranteed by section 1 of the 14th amendment to the Constitution of the United States. (R. 20).

It will be noted upon examination of the stipulation of facts that the theory upon which the action was

brought in the lower court is that appellant was entitled to a license to act as an additional agent in the city of Portland, Oregon, for the Northwestern National Insurance Company of Milwaukee, Wisconsin, upon the filing of an application in the manner required by section 6333, Oregon Laws, and the payment of the annual license fee of $2 required by that section.

Copious extracts from the laws of the state of Oregon relating to insurance agents, including the manner of their appointment, are printed in an appendix (pages 77 to 140) to appellant's opening brief herein. The parts of said section 6333 which appellee deems material to the questions presented in this appeal are printed as "Appendix A" to this brief.

The said application of appellant was denied by the appellee upon the ground and for the reason that the application having been to represent the Northwestern National Insurance Company of Milwaukee, Wisconsin (R. 4), the appointment of such an agent is governed by section 6388, Oregon Laws, the parts of which that are deemed by appellee to be material to the question presented herein are printed as "Appendix B" to this brief.

The said Northwestern National Insurance Company thereafter made application for the appointment of appellant to represent it as agent in Portland, Oregon (R. 7), but said application was denied by appellee for the reason that it could not be granted except upon the payment of the said additional fee of $500, which payment the said insurance company refused to make.

SUMMARY

At page 14 of appellant's opening brief herein it is said that the section which is attacked in this case is section 6388, Oregon Laws, and that subdivisions 1, 4, 7 and 8 contain the provisions of which appellant complains. The question presented to this court is therefore limited to whether or not the provision of section 6388, Oregon Laws, prohibiting the licensing of a third agent to represent a foreign fire insurance company in a city of the state of Oregon having more than 50,000 inhabitants, without the payment of a fee of $500, deprives the appellant of any right guaranteed by the 14th amendment of the Constitution of the United States.

POINTS AND AUTHORITIES

I

Appellant has no constitutional right to act as agent for a foreign insurance company which has not complied with conditions precedent to its right to appoint such an agent to represent it in the state of Oregon.

Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.

Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297, 301.

Nutting v. Massachusetts, 183 U. S. 553, 46 L. Ed. 324, 327.

Bothwell v. Buckbee Mears Co., 275 U. S. 274, 277, 72 L. Ed. 277, 279.

Argument

Appellant's second contention in this case is stated on page 18 of his brief to be:

> Second, that the statute is in reality not a corporate regulation, but an unconstitutional attempt to deprive the individual of his common law right to follow an inherently lawful occupation, in that its purpose and effect is to do this rather than to regulate the business of the corporation.

And it was upon that theory that the case was argued by plaintiff (appellant herein) in the lower court.

Subsections 7 and 8 of section 6388, Oregon Laws, provide that:

> (7) *Additional Agent in Certain Cities.* Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of fifty thousand or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.
>
> (8) *Annual License Fee for Additional Agent.* Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of five hundred dollars for each such agent.

It is the contention of the appellee that the above provisions constitute conditions precedent to the right of a foreign insurance company to engage in business in this state to the extent of the appointment of more than two agents in any city of the state having a population of 50,000 or more inhabitants according to the last federal census, and that until such conditions are complied with the foreign corporation has no power to appoint such an agent.

The application of appellant was for a license to act as third agent of a foreign fire insurance company.

In *Paul v. Virginia*, 8 Wall. 168, 19 L. Ed. 357, the plaintiff in error was convicted of attempting to act

as agent for a foreign insurance company which had not complied with a statute requiring the deposit of bonds of a specified character and amount as a condition precedent to its right to do business in Virginia.

Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297, came to this court by writ of error to review a judgment of the lower court that the plaintiff in error was guilty of the misdemeanor of procuring, for a resident of the state, insurance from a foreign insurance company that had not complied with the laws of the state. In that case it was contended that the plaintiff in error was acting as agent for a resident of the state in procuring the insurance. This contention was disposed of as follows (page 658, U. S. Rep., 301 L. Ed.):

> If the contention of the plaintiff in error were admitted, the established authority of the state to prevent a foreign corporation from carrying on business within its limits, either absolutely or except upon certain conditions, would be destroyed. It would be only necessary for such a corporation to have an understanding with a resident that in the effecting of contracts between itself and other residents of the state he should be considered the agent of the insured persons, and not of the company. This would make the exercise of a substantial and valuable power by a state government depend not on the actual facts of the transactions over which it lawfully seeks to extend its control but upon the disposition of a corporation to resort to a mere subterfuge in order to evade obligations properly imposed upon it. Public policy forbids a construction of the law which leads to such a result, unless logically unavoidable.

Nutting v. Massachusetts, 183 U. S. 553, 46 L. Ed. 324, 327, involves a conviction of negotiating unlawful insurance with a foreign insurance company, not admitted to do business in the state of Massachusetts. The law provided that:

> It shall be unlawful for any company to make any contract of insurance upon or concerning any property or interests or lives in said commonwealth or with any resident thereof or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance unless and except as authorized under the provisions of this act.

The law further prescribed the conditions with which foreign insurance companies were required to comply before they could do business in Massachusetts. Without compliance with said conditions, the plaintiff in error proceeded to negotiate a contract of insurance with London Lloyds, the arrangement having been made through a New York firm of insurance agents. The defendant requested the court to instruct the jury that so much of the Massachusetts statute as purported to make illegal such acts as were done by the defendant was contrary to the 14th amendment of the Constitution of the United States, and as such was unconstitutional and void. The request was refused and the court instructed the jury that upon the facts stated they would be warranted in finding the defendant guilty. The case went to the state court upon exceptions to the ruling of the trial court, which ruling was sustained and, upon being sentenced, the plaintiff in error and defendant

sued out a writ of error to this court. In the opinion by Mr. Justice Gray the court said:

> The state having power to impose conditions on the transaction of business by foreign insurance companies within its limits has the equal right to prohibit the transaction of such business by agents of such companies or by insurance brokers who are to some extent the representatives of both parties.

Citing

Hooper v. California, 155 U. S. 648, 39 L. Ed. 297, 5 Inters. Com. Rep. 610, 207.

Allgeyer v. Louisiana, 165 U. S. 578, 41 L. Ed. 832, 17 Sup. Ct. Rep. 427.

In the recent case of *Bothwell v. Buckbee Mears Co.*, 275 U. S. 274, 277, 72 L. Ed. 277, 279, this court held that a foreign insurance corporation had no constitutional right to solicit insurance in Minnesota by means of an agent present within that state until conditions precedent had been complied with, and that for an act of solicitation there the state might have punished the agent; and also the company as principal.

The instant case was instituted upon the same theory as that of *Northwestern National Insurance Co. et al. v. Fishback*, 130 Wash. 490, 228 Pac. 516, 36 A. L. R. 1507, parts of the opinion in which are to be found beginning at page 57 of appellant's brief herein. It will be noted that the opinion in that case is confined to the single question of the effect of an act limiting the number of agents an insurance company may appoint in any particular locality upon the constitutional right of an

individual to engage in the business of an insurance agent. The points of law urged in that case, as set forth in the report in A. L. R., contain no reference to the effect of the law in question upon the constitutional rights of the insurance company, and no discussion of that matter is to be found in the opinion of the court.

This is also true of the case of *Franklin Fire Insurance Co. and Espe v. Montoya*, 251 Pac. 390, in which the case of *Northwestern National Insurance Co. et al. v. Fishback*, supra, was referred to by the court as having held that a similar provision in the Washington code was not an attempt to regulate the insurance business but was merely an unwarranted restriction sought to be imposed upon the occupation of insurance agents.

II

The power of the state to impose conditions precedent to the doing of business therein by a foreign insurance company is not subject to constitutional limitation.

Section 6388, O. L. (sec. 22-c, chap. 203, General Laws of Oregon, 1917).

Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.

Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297.

Fire Association of Philadelphia v. New York, 119 U. S. 110, 30 L. Ed. 342.

Security Mutual Life Insurance Co. v. Prewitt, 202 U. S. 246, 257, 50 L. Ed. 1013, 1018.

Swing v. Weston Lumber Co., 205 U. S. 275, 278 51 L. Ed. 799, 800.

Hanover Fire Insurance Co. v. Carr, 272 U. S. 494, 507, 71 L. Ed. 372, 379.

Argument

The right of a state to forbid a foreign insurance company from doing business therein or to prescribe any condition, however absurd or unreasonable, upon which such a corporation may be admitted to do business in the state is so well established and has been so often announced by this court that space will not be devoted to discussion of the subject, but an attempt will be made to confine the argument to the point that the provision of the Oregon laws requiring the payment of a $500 license fee by a foreign insurance corporation when applying for the appointment of a third agent to represent it in cities having 50,000 or more inhabitants according to the last federal census is a condition precedent to the right of such a foreign corporation to do business in the state to that extent, and denies no constitutional right of one seeking to be so licensed.

In *Fire Association of Philadelphia v. New York*, 119 U. S. 110, 30 L. Ed. 342, the plaintiff in error was a Pennsylvania corporation organized for the transaction of the business of fire insurance and having its principal place of business in the city of Philadelphia. It maintained an agency in the state of New York and no question was raised but that it had uniformly complied with all the requirements and conditions imposed by the laws of New York upon fire insurance companies from other states establishing and maintaining agencies in that state, except the payment of a tax upon premiums received by it in 1881 upon risks located within the state of New York, which were imposed by

force of a reciprocity provision in the New York law and a tax imposed by the state of Pennsylvania of three per centum upon the entire amount of premiums of every character and description received by insurance companies or associations in that state during the year or fraction of a year ending the 31st day of December preceding. The controversy was whether the defendant was liable to pay any tax to the superintendent of the insurance department of the state of New York upon said premiums received by it in the year 1881, and, if any, what amount. The defendant (plaintiff in error) claimed the protection of the 14th amendment. The court held that:

> This Pennsylvania corporation came into the state of New York to do business, by the consent of the state, under this act of 1853, with a license granted for a year, and has received such license annually, to run for a year. It is within the state for any given year under such license, and subject to the conditions prescribed by statute. The state, having the power to exclude entirely, has the power to change the conditions of admission at any time, for the future, and to impose as a condition the payment of a new tax, or a further tax, as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the state or within its jurisdiction. It is outside, at the threshold, seeking admission, with consent not yet given. The act of 1865 had been passed when the corporation first established an agency in the state. The amendment of 1875 changed the act of 1865 only by giving to the superintendent the power of remitting the fees and charges required to be collected by then existing laws. Therefore the corporation was at all times,

after 1872, subject, as a prerequisite to its power to do business in New York, to the same license fee its own state might thereafter impose on New York companies doing business in Pennsylvania. By going into the state of New York in 1872, it assented to such prerequisite as a condition of its admission within the jurisdiction of New York. It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provisions; and such consent could not be given until the tax, as a license fee for the future, should be paid.

It is not to be implied, from anything we have said, that the power of a state to exclude a foreign corporation from doing business within its limits is to be regarded as extending to an interference with the transaction of commerce between that state and other states by a corporation created by one of such other states.

In *Hanover Fire Insurance Co. v. Carr*, 272 U. S. 494, 510, 71 L. Ed. 372, 380, the validity of an act imposing a tax upon the net receipts for the preceding year of an agency for a foreign corporation doing business in the state, which should be entered on the tax lists of the county, town or municipality and subject to the same return of taxation for all purposes—state, county, town and municipal—that other personal property is subject to at the place where located, which tax was to be in lieu of all town and municipal licenses, was attacked upon the ground that it denied to the complainant the equal protection of the laws under the 14th amendment of the federal constitution. The distinction between a license fee imposed as a condition precedent and a tax burden imposed after a foreign corporation has secured

the right to do business is explained by the court in the following language (page 510 U. S. Rep. 380, L. Ed.):

> In subjecting a law of the state which imposes a charge upon foreign corporations to the test whether such a charge violates the equal protection clause of the 14th amendment, a line has to be drawn between the burden imposed by the state for the license or privilege to do business in the state and the tax burden which, having secured the right to do business, the foreign corporation must share with all the corporations and other taxpayers of the state. With respect to the admission fee, so to speak, which the foreign corporation must pay to become a quasi citizen of the state and entitled to equal privileges with citizens of the state, the measure of the burden is in the discretion of the state and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the 14th amendment; but after its admission the foreign corporation stands equal and is to be classified with domestic corporations of the same kind.

And at page 515 U. S. Rep., 382 L. Ed.:

> The state in dealing with foreign corporations may properly and without discrimination as between them and domestic companies regulate the former by a provision that for a failure by them to comply with any valid law governing the conduct of their business in the state the license already granted may be revoked. That is a legitimate condition in the treatment of foreign companies which do not have property and home within the state. It is a police regulation. But the power thus to revoke a license for breach of a law can only be validly exercised, if the law be a constitutional one. By compliance with the valid conditions precedent, the foreign insurance company is put on a level with all other insurance companies of the same kind, domestic or foreign

within the state, and tax laws made to apply after it has been so received into the state are to be considered laws enacted for the purpose of raising revenue for the state and must conform to the equal protection clause of the 14th amendment. This conclusion is not only in accord with our previous decisions but is sustained by the reasoning in a satisfactory judgment of the court of errors and appeals of New Jersey. (*Erie R. Co. v. State*, 31 N. J. L. 531, 542-544, 86 Am. Dec. 226.)

We thus reach the question whether a tax imposed upon foreign fire, marine and inland navigation insurance companies on the net receipts of all their business, whether fire, marine, inland navigation or other risks, is a denial of the equal protection of the laws when domestic insurance companies pay no taxes on such net receipts. Under the previous decisions of the supreme court of Illinois, when the net receipts were treated as personal property and the assessment thereon as a personal property tax subjected to the same reductions for equalization and debasement, it might well have been said that there was no substantial inequality as between domestic corporations and foreign corporations, in that the net receipts were personal property acquired during the year and removed by foreign companies out of the state, and could be required justly to yield a tax fairly equivalent to that which the domestic companies would have to pay on all their personal property including their net receipts or what they were invested in. It was this view, doubtless, which led to the acquiescence by the state authorities and the foreign insurance companies in such a construction of section 30 and in the practice under it. But an occupation tax imposed upon 100 per cent of the net receipts of foreign insurance companies admitted to do business in Illinois is a heavy discrimination in favor of domestic insurance companies of the same class and in the same business which pay only a tax on the assessment of personal property

> at a valuation reduced to one-half of 60 per cent of the full value of that property. It is a denial of the equal protection of the laws. * * *

In the instant case the license fee is to be paid by a foreign corporation before it may engage in business to the extent of appointing three agents in any city of 50,000 or more inhabitants. When the Northwestern National Insurance Company obtained a license in this state said license entitled it to do business only to the extent authorized by the laws of this state and upon compliance with conditions precedent to the exercise of such right. Until such conditions are complied with such a foreign corporation has never acquired a constitutional right to do business to the extent of appointing three agents in any city of the class involved.

The argument in appellant's opening brief is directed largely to the contention (page 39):

> That once a state admits the foreign corporation within its jurisdiction, in so far as its constitutional rights are concerned, it becomes a person to the same extent that a domestic corporation is a person.

A like argument was advanced in the case of *Fire Association of Philadelphia v. New York*, supra, in which the court said (119 U. S., p. 117, 30 L. Ed., p. 346):

> The defendant, on the assumption that if it was within the jurisdiction of the state of New York, it was, though a foreign corporation, a "person," and so entitled to the benefit of the amendment, contends that it was within such jurisdiction. The argument is, that it established an agency within

the state in 1872, which it had ever since maintained; that it complied, from year to year, with all the requirements and conditions imposed by the laws of the state on foreign fire insurance companies doing business in the state; that it received from year to year certificates of authority from the superintendent of the insurance department, as provided by statute; that, under those circumstances, it was legally within the state and within its jurisdiction; that, being in the state, by permission of the state, continuously from 1872 to 1882, the state imposed on it, while there, in 1882, an unequal and unlawful burden; and that the New York act of 1865 did not come into effect as to Pennsylvania corporations until the Pennsylvania act of 1873 was passed, at which time the defendant had already been a year in the state.

But we are unable to take that view of the case.
* * *

Following which is a reference to the case of *Paul v. Virginia*, supra, including the following excerpt from the opinion of Mr. Justice Field in that case:

"Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." As to the power of congress to regulate commerce among the several states, the court said that, while the power conferred included commerce carried on by corporations as well as that carried on by individuals, "issuing a

policy of insurance is not a transaction of commerce." This decision only followed the principles laid down in the earlier cases of *Bank of Augusta v. Earle*, 13 Pet. 519, 588 (38 U. S. bk. 10 L. ed. 274, 307), and *Lafayette Ins. Co. v. French*, 18 How. 404 (59 U. S. bk. 15, L. ed. 451.)

The following excerpt from the opinion of the court in *Swing v. Weston Lumber Co.*, 205 U. S. 275, 278, 51 L. Ed. 799, 800, is also submitted as being in point:

> The power of the state to prohibit foreign insurance companies from doing business within its limits, or, in allowing them to do so, to impose such conditions as it pleases, is undoubted. (*Hooper v. California*, 155 U. S. 648, 39 L. ed. 297, 5 Inters. Com. Rep. 610, 15 Sup. Ct. Rep. 207; *Security Mut. L. Ins. Co. v. Prewitt*, 202 U. S. 246, 50 L. ed. 1013, 26 Sup. Ct. Rep. 619; *Chattanooga Nat. Bldg. & L. Asso. v. Denson*, 189 U. S. 408, 47 L. ed. 870, 23 Sup. Ct. Rep. 630.

In *Security Mutual Life Insurance Co. v. Prewitt*, 202 U. S. 246, 257, 50 L. Ed. 1013, 1018, the court said:

> As a state has power to refuse permission to a foreign insurance company to do business at all within its confines, and as it has power to withdraw that permission when once given, without stating any reason for its action, the fact that it may give what some may think a poor reason or none for a valid act is immaterial.

Sections 4 and 5, page 187, Laws of 1899, sections 4639, 4640, Lord's Oregon Laws, are printed in full as Appendix "C" to this brief. They permitted insurance companies to establish agencies in this state to consist of but one agent in each city, town or village to represent each title registered. Additional agents might be

appointed by paying in advance to the county wherein they were appointed a quarterly license of $100 for each additional agent so appointed.

These statutes were repealed by section 30 of chapter 203, General Laws of Oregon, 1917, and reenacted as section 22-c of that act.

The power of the state to exact such conditions has never heretofore been questioned.

Respectfully submitted,

I. H. VAN WINKLE,
Attorney General,

WILLIS S. MOORE,
Assistant Attorney General,

Attorneys for Appellant.

APPENDIX "A"

(Section 6333, Oregon Laws)

Agents' Licenses

No company, association, person or persons, authorized to transact insurance or offer indemnity contracts in this state, other than life insurance companies, and not incorporated under the laws of this state, hereinafter designated as company, shall make, write, place or cause to be made, written or placed, any policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state of Oregon, liability created by or accruing under the laws of such state, or undertakings to be performed in such state, except through their regularly commissioned and licensed resident agents, who shall countersign all policies or indemnity contracts so issued and collect the premiums therefor, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state, and no person shall pay or forward any premiums or applications for insurance or in any manner secure, help or aid in the placing of any insurance, or effect any contract of insurance or indemnity upon property, liability or undertakings located in this state with any such insurer which is not authorized to transact its business in this state; provided:

* * * * *

(3) *Agent's Appointment To Be Filed With Commissioner; License Fee*—Every company duly authorized and licensed to transact insurance business, other than life insurance companies, in the state of Oregon, and lawfully doing such business therein, may in respect thereof appoint an agent or agents in each city, town or village in this state, and the name of every agent appointed in accordance with the provisions of this section, including the

classes of business he is authorized to transact for such company, shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner, if he finds the agent qualified, shall thereupon issue to each such agent a license setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending April 1, following the date of such appointment; provided, that the license issued to an established agency of any company in any city, town or village in this state may be transferred by the insurance commissioner to another agent or agency upon proper application of any such company, without exacting further fees. Every such license for each such agent representing any such company shall be renewed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such license shall be $2 and shall be paid to the insurance commissioner.

APPENDIX "B"

(Section 6388, Oregon Laws)

Fire Insurance

(1) *Foreign Fire Insurance Companies Not to Write Insurance Except Through Licensed Agent*—It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid; provided, that this section shall not apply to direct insurance covering the rolling stock and other property belonging to and used in the

operation and maintenance of plant and business of railroad corporations or other common carriers or property in transit while in the possession and custody of railroad corporations or other common carriers and mutual fire insurance companies. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president, manager, or chief executive officer in the United States that this section has not been violated. This section shall not apply to policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state.

(2) *"Title" Under Which Fire Insurance Is To Be Written Must Be Registered*—Every fire insurance company shall, before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, file with the insurance commissioner of this state the "title" under which it proposes to write any such insurance in the state of Oregon, and such title shall be registered by the said insurance commissioner, together with the name of the insurance company filing such title, and a sample and specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner; and upon paying the fee as hereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

(3) *Filing Fee; Certificate*—Every insurance company registering a title under this act shall pay to the insurance commissioner a fee of $5 and the insurance commissioner shall then issue a certificate to the insurance company registering such title, setting forth the name of the company, and attaching to the certificate a facsimile of the title registered and filed as hereinbefore provided.

(4) *License of Fire Insurance Agent; Certificate; License Fees*—Every insurance company licensed to transact a fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state to represent the title registered, and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the provisions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent that [who] is qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March 31 following the date of such appointment. Every such agent now representing any such company, or who may hereafter be appointed to represent any such company, provided such agent is qualified as provided in this act, shall be relicensed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such certificate shall be $2 and shall be paid to the insurance commissioner; provided, that the certificate issued to an established agency of any company in any city, town or village in the state may be transferred to any agent or agency by the insurance commissioner upon proper application of any such company without exacting further fees.

(5) *Additional Title*—(a) Any insurance company authorized to transact a fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of corporate title by such companies in this act and may issue its policies under such additional title.

(b) Fees. Any such company qualifying to transact business under an additional title shall be subject to the payment of the same fees for the transaction of business under such additional title as are required of such company in the transaction of business under its corporate name, and may appoint agents to transact its business under such additional title in the same manner as provided for companies.

(c) Report. Any company transacting business under an additional title shall report to the insurance commissioner the amount of such business transacted under the additional title, for taxation and departmental purposes, in the same manner and form as such company is required to report the business transacted under its corporate name.

(6) *Appointment of Additional Agent*—Any such insurance company which is authorized to transact fire insurance in this state in its corporate title and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

(7) *Additional Agent in Certain Cities*—Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.

(8) *Annual License Fee for Additional Agent.* Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of $500 for each such agent.

APPENDIX "C"

(Lord's Oregon Laws)

§ 4639. Agencies May Be Established—Name of Agent to Be Filed.

Every insurance company or association having complied with section 4612 and having paid an annual license of $50, as provided in section 4634, and otherwise having fully complied with the provisions of section 4634, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town, or village in the state to represent each title registered, as hereinbefore provided, and additional agencies as hereinafter provided; and the name of every agent appointed in accordance with the provisions of this section shall be filed with the insurance commissioner, who shall issue to each agent a certificate, setting forth that such agent is entitled to act for the company appointing him, which certificate shall continue in force until revoked, or as long as such agent continues to represent such authorized company or companies. The fee fixed for such certificate shall be $1 and shall be paid to the insurance commissioner. (L. 1899, p. 187, § 4; B. & C., § 3729; L. 1903, p. 16, § 1.)

§ 4640. Additional Agents — Payments Required, Mode of Proceeding.

Any insurance company or association may appoint additional agents in any city, town or village of this state, by paying in advance to the county wherein such additional agent is appointed a quarterly license of $100 for every such additional agent so appointed; and the proper officer of the county, upon receiving payment for such license, shall issue his receipt therefor, and the insurance commissioner, upon presentation to him of such receipt by the licensee, shall issue to such licensee a certificate setting forth that such additional agent is entitled

to act for the company appointing him. The application for the license, and the license, shall designate the name of the city, town or village for which he is appointed, and such agent must be a resident thereof and shall maintain his office there; provided, that in cities containing a population of 40,000 or more inhabitants a..y insurance company or association may appoint two agents under the provisions of section 4639. (L. 1899, p. 187, § 5; B. & C., § 3730.)

SUPREME COURT OF THE UNITED STATES.

No. 17.—October Term, 1929.

Karl Herbring, Appellant, *vs.* Claire A. Lee, as Insurance Commissioner of the State of Oregon.	Appeal from the Supreme Court of the State of Oregon.

[November 25, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

This case arose under the Insurance Law of Oregon. 2 Oregon Laws, Tit. 36, §§ 6322 to 6604. Sec. 6388 of this Law provides, *inter alia*, as follows:

(1) "It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid . . .";

(4) "Every insurance company licensed to transact a fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state . . . and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the provisions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent . . . qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year. . . The fee fixed for issuing such certificate shall be $2 and shall be paid to the insurance commissioner . . .";

(7) "Any such insurance company . . . may appoint one additional agent . . . in any city of this state having a population of fifty thousand or more inhabitants according to the last federal census . . . ";

(8) "Any such insurance company may appoint an additional agent or agents . . . in any city of this state upon application to the insurance commissioner on payment of an annual license fee of five hundred dollars for each such agent."

Herbring, a resident and practising attorney in the city of Portland, Oregon, in good standing, applied to Lee, the Insurance Commissioner of Oregon, for an agent's license to represent the Northwestern National Insurance Company of Milwaukee—a foreign corporation duly qualified to write policies of fire insurance in Oregon, and already having two agents in Portland. The application—upon which the Company had indorsed its approval—was accompanied by Herbring's check for $2 as payment for a license fee. The Commissioner returned this application to the Company, stating that he could not accept an application direct from Herbring and requesting that the Company make the application. The Company itself thereupon executed an application for a license to Herbring to represent it as agent in Portland, and sent this to the Commissioner, but without the payment of any fee or any offer of such payment. The Commissioner returned this application to the Company, stating that as it already had two agents in Portland, its request for an additional license to Herbring could not be granted unless it wished to pay the additional fee of $500 prescribed by the Oregon law. On the same day the Commissioner returned Herbring's check and advised him that his application had been returned to the Company as he would make a third agency for the Company in Portland, "and this is not permissible under the Oregon Insurance Laws, unless the additional fee of $500 is paid for such license."

The Company, so far as appears, neither replied to the Commissioner, nor paid or tendered the $500 fee, nor questioned the validity of this requirement. Herbring, however, appealed to the Circuit Court of the county from the decision of the Commissioner refusing to issue to him a license as an agent for the Company. See § 6335. The Company was not a party to this appeal. The court—which heard the matter without pleadings—finding

that the Company's application for the appointment of Herbring to act as an additional agent was denied by the Commissioner for the reason that it refused to pay the license fee of $500 required by subd. 8 of § 6388 to be paid by any insurance company appointing an additional agent, and that this provision is "void and unconstitutional and an unlawful interference with the right of said agent to engage in the business of selling fire insurance in the State of Oregon and with the right of said insurance company to appoint such agent, except upon the payment of said additional license fee," ordered the Commissioner to issue a license to Herbring to act as agent for the Company in Portland, without requiring the Company to pay $500 as a license fee for such appointment.

On an appeal by the Commissioner from this order, the Supreme Court of Oregon held that the payment of the $500 fee is required by § 6388 "as a condition precedent to the right of any fire insurance company to appoint such additional agent;" that, "a foreign corporation being required to comply with the statute, in order to be entitled to appoint agents and consummate its business in the state of Oregon, it follows . . . that in order for an agent to obtain a license to represent such a foreign corporation there must first be a compliance by the foreign corporation with the requirements of our state law", and that "the rights of one applying for a license to act as agent for such insurance company are contingent upon the compliance of the company with conditions precedent to its right to appoint such an agent;" and further, that subd. 8 of § 6388 is not repugnant to either the privileges or immunities clause or the equal protection clause of the Fourteenth Amendment, but is a valid legislative requirement of a foreign insurance company in the conduct of its business in Oregon. The judgment of the Circuit Court was accordingly reversed, and the proceeding dismissed. 126 Or. 588.

From this judgment Herbring was allowed an appeal to this Court. The only Federal question presented by his assignments of error is that the Supreme Court of Oregon "erred in holding that Sub-div. 8 of Section 6388 of the Oregon Laws does not abridge the rights of the appellant Karl Herbring, guaranteed by Section 1 of the 14th Amendment to the Constitution of the United States."

1. In support of this assignment the appellant takes the position that the obtaining of an agent's license, while a condition precedent to the right of the agent to do business, has no bearing whatever upon the rights and privileges of the corporation, and that the statute "is an unreasonable and unwarrantable interference with the right of the individual to carry on a legitimate business, and class legislation in that it is an attempt to monopolize the insurance agency business", and "in reality not a corporate regulation, but an unconstitutional attempt to deprive the individual of his common law right to follow an inherently lawful occupation."

This position is not well taken. Subd. 8 of § 6388, as appears upon its face and from the entire context, is not directed against individual insurance agents and imposes no restrictions upon them, but is, as construed by the Supreme Court of the State, a provision requiring the insurance company itself to pay a $500 fee as a condition precedent to its right to appoint an additional agent to represent it in any city. To exercise this right, as indicated by the statute, it must apply to the Insurance Commissioner and pay the additional license fee for such agent. It is plainly no interference whatever with the right of the individual to carry on the business of an insurance agent, or class legislation in this respect. It is obvious that, as pointed out by the Supreme Court of Oregon, in order that an agent may be licensed to represent a company there must first be a compliance by the company with the requirement of the statute; the right of one applying for a license to act as an agent for the company being contingent upon such compliance. No one has the right to receive a license to represent a company as its agent, when the company itself has no right to appoint him. And the contention that the statute is an unconstitutional interference with the individual rights of Herbring himself in conducting the business of an insurance agent, is without merit.

2. The appellant also urges in argument, that "if the statute be regarded as a corporate regulation, rather than as an individual prohibition, it is unconstitutional, in that it is unreasonable, arbitrary and capricious" and cannot be sustained under the police power of the State. In other words, he seeks in argument to challenge the validity of the statute on the ground that it is an infringement of the Company's constitutional right to appoint an addi-

tional agent. The Company itself is not here insisting that the statute constitutes an impairment of its own right; it raised no such question before the Commissioner, and for aught that appears acquiesced in that officer's view of the validity of the statute.

It may well be that under the facts in this case Herbring's individual interest in this question is not direct but merely collateral and remote and not such as would have entitled him to challenge the constitutional validity of the statute on the ground that it is an impairment of the Company's own rights. But, however that may be, there is no assignment of error here which challenges the validity of the statute on that ground; and the question which Herbring seeks to raise in argument, is not before us for decision.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.